

**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

THIRTY VAN NESS AVENUE, SUITE 2011  
SAN FRANCISCO, CALIFORNIA 94102-6080  
PHONE: (415) 557-3686

**BCDC Original**

PERMIT NO. 19-85  
(Issued on March 13, 1986, As  
Amended Through February 13, 1996)  
REVISED AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)

Port of Oakland  
P.O. Box 2064  
Oakland, California 94604-2064

ATTENTION: Fredrick R. Ferrin

AND

Scott's Jack London Seafood, Inc.  
1719 Bonanza Street  
Walnut Creek, California 94596

ATTENTION: Ray Gallagher

Ladies and Gentlemen:

On March 6, 1986, the San Francisco Bay Conservation and Development Commission, by a vote of 16 affirmative, 1 negative, and 1 abstention, approved the resolution pursuant to which the original permit was issued. Moreover, on June 10, 1991, November 5, 1991, June 25, 1992, and June 23, 1994, the Executive Director, pursuant to Regulation Section 10822, approved Amendment No. Five, Four, Six, and Seven, respectively. On August 17, 1995, the San Francisco Bay Conservation and Development Commission, by a vote of 15 affirmative, 0 negative and 0 abstentions, approved the resolution pursuant to which this amended permit is hereby issued:

**I. Authorization**

A. Subject to the conditions stated below, the permittees is are granted permission to do the following on a 19.6-acre site, 16.1 acres of land and 3.5 acres of water, along the Oakland Estuary, between Clay Street and the Franklin D. Roosevelt Pier on the west and Webster Street on the east, in the City of Oakland, Alameda County:

**1. In the Bay**

- a. Remove 9,300 square feet of fill used for public access walkways, boat berths, and guest berthing;
- b. Construct and use a 54-berth addition to the existing marina requiring 8,500 square feet of floating Bay fill;

Dedicated to making San Francisco Bay better.

RECEIVED  
MAR 15 1996

SAN FRANCISCO BAY CONSERVATION  
& DEVELOPMENT COMMISSION

PERMIT NO. 19-85

(Issued on March 13, 1986, As

Amended Through February 13, 1996)

REVISED AMENDMENT NO. EIGHT

(Exclusive of Amendment Nos. One,  
Two, and Three)

Port of Oakland and

Scott's Jack London Seafood, Inc.

Page 2

- c. Place and use 300 square feet of fill for a restaurant within the Boatel expansion;
  - d. Construct and use 6,700 square feet of pile-supported wooden public access walkways bayward of the Boatel and the new Boatel expansion;
  - e. Place and use 6,263 square feet of new fill for public access at the foot of Broadway for tidal stairs, an observation platform, and wooden walkways;
  - f. Construct and use 20 new public guest berths, and a combination floating observation platform and pier for mooring large visiting vessels, both covering 5,500 square feet of Bay surface area;
  - g. Install a 10-foot by 126-foot pier, including 24 concrete pilings, for access to the ferry;
  - h. Install 6 public access benches and a glass windscreen on the westerly side of the ferry pier, and permanently dedicate the pier for public access;
  - i. Install a blue canvas awning with a 20-inch rise over the ferry pier;
  - j. Install a 54-foot-long, 6-foot-wide gangway to a 30-foot by 80-foot steel float, with 4, 20-inch steel piles;
  - k. Install a wooden platform and ramp for handicap access on the steel float;
  - l. Remove approximately 3,800 square feet of boat docks, including 7 pilings and install 2, 16-inch timber piles to anchor the remaining pier;
  - m. Relocate an existing dock to alongside Dock D, at the foot of 7th Avenue; and
  - n. Replace an existing dock, located between Franklin and Webster Streets, with a dock located at the foot of Clay Street;
  - o. Relocate and use an existing 1,600-square-foot barge approximately 20 feet closer to the shoreline as a small boat launching float, affixed to four, approximately four-square-foot steel piles; (Amendment No. Eight); and
  - p. Install and use a 175-square-foot, small boat launching head-float on the shoreline side of the relocated barge (Amendment No. Eight).
2. **Within the 100-foot shoreline band**, construct and use the following:
- a. A 20,300-square-foot portion of a 42,500-square-foot hotel;
  - b. A 8,400-square-foot portion of a 14,250-square-foot expansion of the Boatel;
  - c. A 700-square-foot portion of two small retail structures, covering a total of 18,400 square feet of area;
  - d. A 3,700-square-foot portion of a 5,600-square-foot expansion to Scott's Seafood Grill and Bar;
  - e. A 64,500-square-foot area, paved and landscaped for public access purposes; and

PERMIT NO. 19-85

(Issued on March 13, 1986, As  
Amended Through February 13, 1996)  
REVISED AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)  
Port of Oakland and  
Scott's Jack London Seafood, Inc.

Page 3

- f. Make modifications to structures which do not change the footprint of the buildings nor detrimentally affect the quality or area provided for public access.
- g. Plant an approximately 6,000-square-foot area north-west of the Boatel with grass to minimize erosion and dust until the hotel is built;
- h. improve approximately 900 square feet of an existing public plaza area for outdoor dining, bayward of the Old Spaghetti Factory Restaurant;
- i. use dedicated public access areas for regularly scheduled, publicly-oriented events including but not limited to a farmer's market, parades, festivals, fairs, and a limited number of events charging paid admission, not including restaurant-sponsored private banquets, as limited by Special Condition II-B-2-a;
- j. Use up to 500 square feet of dedicated public access area for small retail kiosks or carts for vending food or merchandise, as shown in Exhibit BB and as limited by Special Condition II-B-2-b; and
- k. Construct a 472-square-foot ground level building addition, a 230-square-foot entry canopy and landscaping at Kincaid's Restaurant.
- l. Use a dedicated public access plaza for the periodic, temporary installation and use of a 4,500-square-foot banquet tent as part of Scott's Restaurant through January 15, 1996, pursuant to Special Condition II-B-2 (Amendment No. Eight);
- m. Construct, use and maintain a 4,400-square-foot, 19 to 40-foot-tall pavilion for shared public and private use, pursuant to Special Condition II-B-2 (Amendment No. Eight);
- n. Install cafe seating, benches, lighting, two sets of binoculars and other site furnishings within an existing 20,000-square-foot plaza (Amendment No. Eight); and
- o. Install and maintain three permanent and two temporary public access directional signs as part of the pavilion project. (Amendment No. Eight)

B. This amended authority is generally pursuant to and limited by your application of December 18, 1985, your letter dated December 16, 1987, requesting Amendment No. One which was reclassified as Amendment No. Five to BCDC Permit No. M84-94, your letter dated July 20, 1989 requesting Amendment No. Two, which was subsequently abandoned; your letter dated April 4, 1990 requesting Amendment No. Three which was incorporated into Amendment No. Seven; and your letters dated March 22, 1991, March 26, 1991, April 16, 1992, and your application dated April 20, 1993, requesting Amendment Nos. Four, Five, Six and Seven, and your application dated March 30, 1995 for Material Amendment No. Eight, respectively, including all accompanying and subsequent amendments, exhibits, and correspondence thereto, but subject to the modifications required by the conditions herein. The applications for Amendment Nos. One and Two were withdrawn.

C. The work authorized herein must commence no later than July 1, 1987, or this amended permit will lapse and become null and void. The work authorized herein must also be diligently prosecuted to completion and must be completed by July 1, ~~1995~~ 1998 (for hotel in I-A-2-a only) (Amendment No. Eight). The work authorized by Amendment No. Four must be diligently prosecuted to completion and must be completed by November 1, 1995. The work authorized by Amendment No. Five must be diligently prosecuted to completion and must be completed by June 1, 1993. The work authorized by Amendment No. Six must be diligently prosecuted to completion and must be completed by June 1, 1994. The work authorized by Amendment No. Seven must be diligently pursued to completion and must be completed by December 1, 1994. Authorizations I-A-2-h, i, and j and shall lapse seven years from the issuance of Amendment No. Seven. The work authorized by Material Amendment No. Eight must commence by January 15, 1996 and must be diligently pursued to completion and must be completed by March 31, 1997. Reasonable extensions of time may be granted by further amendment of the permit where application is made prior to the completion date.

D. This project will result in a total of 31,247 square feet of fill. Of this fill, 8,500 square feet will be placed for marina berthing, 2,724 square feet for a ferry barge and gangway, 5,500 square feet for public guest berthing, and a pier for visiting vessels, and 14,523 square feet will be placed to improve public access and the appearance of the shoreline. The latter fill will consist of 6,700 square feet of pile-supported boardwalks, 300 square feet of solid fill for Boatel Expansion, 6,263 square feet of concrete fill for tidal stairs, observation platform, and wooden walkways and 1,260 square feet of pile-supported fill for a ferry pier. A total of approximately 102,168 square feet (2.30 acres) of improved public access plazas, walkways, and lookouts will be provided in the shoreline band and on fill in the Bay. Amendment No. Eight modifies the use of 4,400 square feet of this public access by allowing periodic, exclusive, private use of a 4,400-square-foot public access pavilion constructed pursuant to this amendment.

## II. Special Conditions

The amended authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

### A. Specific Plans and Plan Review

1. **Final Plan Review.** No work whatsoever shall be commenced pursuant to this amended permit until final precise site, engineering, grading, riprapping, architectural, landscaping, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The pavilion authorized in Material Amendment No. Eight shall generally conform to plans entitled "Public Pavilion," prepared by Arcus Architecture and Planning, dated June 19, 1995, as modified through July 3, 1995. The specific drawings and information required will be determined by the staff.

- a. **Site, Architectural, and Landscaping Plans.** Site, architectural, and landscaping plans shall include and clearly label the 6.2-foot contour line above Mean Sea Level (the line of highest tidal action), the line 100 feet inland of the line of highest tidal action, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities, and other proposed improvements.
- b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria for all portions of the project to be built on fill. Final plans shall be signed by the professionals of record and be accompanied by evidence that the design complies with all applicable codes.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- e. a. Completeness and accuracy of the plans in showing the features required above, particularly the line of highest tidal action, property lines, and the line 100 feet inland of the line of highest tidal action, and any other criteria required by this amended permit;
- d. b. Consistency of the plans with the terms and conditions of this amended permit;
- e. c. The provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this amended permit;
- f. d. Consistency with legal instruments reserving public access and open space areas;
- g. e. Assuring that any fill in the Bay does not exceed this amended permit; and
- h. f. Consistency of the plans with the recommendations of the Design Review Board.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the amended permit has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.

3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this amended permit or legal instruments approved pursuant to this amended permit, the Special Condition or the legal instrument shall prevail. The permittees ~~is~~ are responsible for assuring that all plans accurately and fully reflect the Special Conditions of this amended permit and any legal instruments submitted pursuant to this amended permit.
4. **Conformity with Plans.** Work authorized by A.1.i. in this amended permit shall conform to plans dated October 17, 1991 entitled "Seabreeze Marina" and "Central Basin", prepared by N. Doolittle and incorporated by this reference herein. The glass windscreen authorized by A.1.h. in this amended permit shall conform to plans dated August 20, 1991, entitled "Canopy Sections and Details" and incorporated by this reference herein. The location and size of the ferry docks shall conform to site plan dated August 15, 1991, entitled "Proposed Development," attached as Exhibit B and incorporated by this reference herein. The ferry dock canopy authorized by A.1.i. in this amended permit shall conform to plans entitled "Jack London Square Ferry, Canopy-Elevation and Section" prepared by the Port of Oakland, dated April 15, 1992 and attached as Exhibit C. The outdoor dining area at the Old Spaghetti Factory Restaurant authorized by I-A-2-n shall conform to plans entitled "Outdoor Dining Area, Plan and Details" reissued on May 19, 1993, prepared by Mel Kroker, architect. No material changes shall be made thereafter to these plans without first obtaining written approval of the change(s) by or on behalf of the Commission.
5. **As-Built Plans.** The permittees shall submit as-built plans of the existing public access improvements in the plaza adjacent to the El Torito and Old Spaghetti Factory restaurants which describe, in detail, existing public access improvements.

#### B. Public Access

1. **Area.** The approximately 2.33-acre (102,168-square-foot) area along the entire approximately 1,875-lineal-foot shoreline of the site including 82,445 square feet of the shoreline band and 18,960 square feet of fill in the Bay as generally shown on Exhibits "A" "B," and "D," "F," and "G" shall be made available to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes as more specifically described in paragraphs II-B-2. If the permittees wishes to use the public access area for other than those purposes expressly delineated in paragraph II-B-2, the permittees must obtain prior written approval by or on behalf of the Commission.
2. **Permissible Uses.** The area required for public access shall be used and maintained for public purposes as outlined in Special Conditions II-B-1 and II-B-7 with only the following exceptions:

- a. The permittees may use the public access areas for regularly scheduled, publicly-oriented events, including but not limited to concerts, parades, fairs, festivals, a weekly farmers market, and a limited number of events charging paid admission, but not including restaurant sponsored private banquets. Each event must receive prior written approval by or on behalf of the Commission and should be generally open to the public, should maintain a continuous band of public access to and along the shoreline at all times, should not discourage any persons or groups from attending approved events, should take advantage of the unique Bay setting, and should not unduly impede public access to and along the shoreline. Any additional maintenance, clean up or other maintenance or improvements required as a result of approved events shall be performed immediately. Excessive soiling of the public access areas or inadequate maintenance of public access facilities, or failure to maintain continuous public access to and along the shoreline are grounds for discontinuing the activities authorized pursuant to sections I-A-2-h through j.

On or before December 15th of each year, the permittees shall submit the following for review and approval by or on behalf of the Commission:

- (1) a list and proposed schedule of all proposed events for the next year;
  - (2) a site plan showing the location of each proposed event;
  - (3) at least 30 days prior to annual events listed in the schedule provided pursuant to this Special Condition, the permittees shall provide a brief written description of the proposed use of the public access areas, e.g. any erection of booths, tables or other temporary elements, the approximate amount of the public access area to be utilized, and the duration of each event, and a site plan showing the location of the event and all temporary structures. These plans shall be reviewed within 15 days of submittal pursuant to Special Condition II-A.
- b. The permittees may locate and use, within the required public access areas, retail kiosks that shall total no more than 500 square feet as shown in Exhibit BB. Approval of individual kiosks shall be pursuant to Special Condition II-A, Specific Plan Review and consistent with descriptive materials provided in the application for Amendment No. Seven;
  - c. In addition to the events authorized pursuant to Special Condition II-B-2-a, the permittees may obtain authorization for a limited number of "last-minute" events. Request for authorization shall be submitted at least 10 days prior to the event. For each "last-minute" event, the permittees shall submit a plan depicting the location of the event pursuant to Special Condition II-B-2-a, prior to the staging of the event. The staff shall review the permittees' request for "last-minute" events within 3 days of submittal and may refuse authorizations for excessive last-minute event requests.

- d. The uses of public access areas authorized by Special Condition II-B-2 shall terminate at the end of seven years from the date of Amendment No. Seven. The Commission will consider extensions of the non-public uses permitted by subsections II-B-2-a through II-B-2-c and may renew these uses only if the permittees can demonstrate to the satisfaction of the Executive Director that the permittees have complied with Special Condition II-B and all non-public use or uses authorized for the seven-year period have not adversely affected the public's use of the public access areas.

**3. Temporary Banquet Tent Use, Pavilion Use and Public Access Barge and Launching Float Use.**

- a. **Temporary Banquet Tent Use.** Scott's Restaurant shall be allowed to use an approximately 4,500-square-foot portion of the approximately 23,000-square-foot dedicated public access plaza located between Scott's and Kincaid's Restaurants in Jack London Square between August 31, 1995 and January 15, 1996 for erecting a tent to house private banquets and other private events only as specified herein. Scott's Restaurant shall submit to and obtain approval by the Port of Oakland of a schedule of private banquets and other private events to be held. The approved event schedule shall be consistent with the parameters for scheduling specified in Exhibit E to this amended permit. The tent shall be erected no sooner than 6 hours prior to an approved scheduled event and shall remain standing no longer than 12 hours following an approved scheduled event.
- b. **Public Pavilion Use.** Scott's Restaurant shall be allowed to use the approximately 4,400-square-foot public pavilion located in the 23,000-square-foot, dedicated public access plaza lying between Scott's and Kincaid's Restaurants in Jack London Square for private events only as specified herein. Scott's Restaurant shall submit to and obtain approval by the Port of Oakland of a schedule of private events. Operation of the fabric panels enclosing the private events beneath the pavilion shall be consistent with the guidelines specified in Exhibit E to this amended permit. The public plaza site furnishings shall be restored immediately following each approved event, or if an approved event terminates after 10:00 PM, the site furniture shall be replaced by 9:00 AM of the following day. California Canoe and Kayak shall be allowed to occasionally use a small portion of the dedicated public access plaza for kayak rentals and classes. The racks for kayak display shall be maintained at the north end of the plaza consistent with the conceptual arrangement shown in Exhibit F to this amended permit.
- c. **Event Schedule Reporting.** Scott's Restaurant shall provide the Port of Oakland with its first quarterly schedule for private events to be held in the pavilion at least 60 days prior to the first event. The events schedule shall not be approved by the Port of Oakland, unless it is consistent with the parameters for scheduling specified in Exhibit E to this amended permit. Subsequently, Scott's Restaurant's quarterly schedules shall be submitted to the Port of Oakland by

PERMIT NO. 19-85

(Issued on March 13, 1986, As  
Amended Through February 13, 1996)  
REVISED AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)  
Port of Oakland and  
Scott's Jack London Seafood, Inc.  
Page 9

January 1, April 1, July 1 and October 1 of each year. By March 1 of 1996 and March 1 of every year thereafter the Port of Oakland shall provide the Commission with a summary of the events scheduled for the previous year. The tent-covered event schedule shall be submitted to the Port of Oakland within 10 days of the issuance of Amendment No. Eight to the BCDC Permit and shall be updated every three months until January 15, 1996.

- d. Public Access Barge and Launching Float Use. The 1,600-square-foot, relocated barge and 175-square-foot launching float shall be used primarily for public launching of small boats, swimming access and other public access uses. The permittees are also authorized to use these facilities for occasional kayak launching and boat removal and for transient tour boat and dining yacht tie-up. The commercial use of this public access facility shall not unduly limit the public's use and enjoyment of the small boat launching facilities.
- e. Violation. The holding of a banquet or other private event within the pavilion or public access plaza not listed in the schedule of events, or the approval of a schedule of events that is inconsistent with the guidelines set forth in Exhibit E to this amended permit shall be considered an activity undertaken without Commission authorization and subject to the schedule of standardized civil penalties described in Commission Regulation Sections 11302(2) and 11386(a)(3).

- 3. 4. **Permanent Guarantee.** Prior to the commencement of construction of each phase of the project, the permittees shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the public access areas within that phase to the extent the permittees is are legally able to do so. The instrument(s) shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this amended permit and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of Alameda County and shall include a legal description of the property being restricted and a map that clearly shows the line of highest tidal action, the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

- a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this amended permit;
- b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and

- c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, lessees, licensees and users.
- 4. 5. **Recordation of the Instrument.** Within 60 days after approval of the instrument, the permittees shall record the instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
- 5. 6. **Improvements Within the Public Access Area.** In accordance with the phased completion schedule described in Special Condition II-B-5, below, the permittees shall install the following improvements:
  - a. A 22,000-square-foot shoreline promenade and access area adjacent to the new hotel with a minimum width of 25 feet, including a public picnic area of approximately 4,500 square feet;
  - b. A 8,400-square-foot access area adjacent to the Boatel extending to the foot of Broadway including walkways a minimum of 13 feet wide, with larger seating areas up to 32 feet wide;
  - c. A 18,000-square-foot paved plaza on the shoreline at the foot of Broadway;
  - d. Five thousand five hundred (5,500) square feet of access on fill between the foot of Broadway and along Scott's including tidal stairs at the foot of Broadway, a 20-foot extension of the 10-foot-wide pile-supported walkway along Scott's, and a 30-foot by 115-foot fixed viewing platform near Scott's;
  - e. Five thousand five hundred (5,500) square feet of floating fill for access including 20 guest boat berths and 18-foot by 90-foot dock for large, visiting vessels;
  - f. A 22,800-square-foot portion of a 32,300-square-foot public pedestrian plaza between Scott's and the Grotto and around the Grotto to the existing pedestrian mall on Water Street; and
  - g. A 1,260-square-foot ferry pier, with 6 public access benches, west of the FDR Pier; and
  - h. A, 18,189-square-foot, existing improved plaza, bayward of the El Torito and Old Spaghetti Factory Restaurants, with 7 benches, 283 square feet of landscaping, Jack London's cabin, the most of the USS Oakland, concrete paving, 4 trash containers, 3 public shore signs, and lighting;
  - i. A 4,400-square-foot, L-shaped pavilion (see Exhibits F) with a translucent fiberglass roof material consistent with awnings in Jack London Square, three sets of four steel columns supporting a tubular steel truss roof-frame with light fixtures attached providing fifteen vertical-feet clear from the existing plaza, a revised paving pattern using pavers which match existing pavers and reflect the shape of the pavilion, tivolli lighting, grade-level up-lighting, fabric panels with

transparent window panels located at the perimeter of the pavilion roof, and colorful flags and banners which do not include the names of any business or product. Signs on the pavilion towers shall be neon and shall read "Public Pavilion" only;

- i. At least 15 tables and 35 chairs which are designed to match the existing cafe seating at the Barnes and Noble bookstore, to be in place at all times, except when the pavilion is needed for approved private events or other approved public events;
- k. Two sets of permanent, pedestal style binoculars for public use free of charge;
- l. At least four additional public access signs, two permanent and two temporary to facilitate shoreline public access between Franklin Street and Broadway on the Bay side of Scott's Restaurant. The temporary signs shall be installed and removed when approved private events are held. One public access sign shall be installed at the entrance to the gangway leading to the kayak launch float that describes the rules and hours for public use of the kayak launch float; and
- m. A 1,775-square-foot kayak launch, including a 1,600-square-foot floating barge and a 175-square-foot head float for use in kayak and other small boat launching, tour and dining yacht tie-up, swimming and other public access purposes;

Such improvements shall be consistent with the plans approved pursuant to Special Condition II-A of this amended permit and shall substantially conform to the plans entitled "Jack London Square Phase I Area; Master Plan," prepared by Amphion Environmental, and as shown on the attached Exhibits A, B, and D.

- 6. 7. Phasing of the Construction of the Public Access Improvements. The public access improvements may be completed in segments in conjunction with the phased development of the project. The public access improvements shall be completed with each phase of the adjacent development and shall be completed prior to the use of the facilities constructed during that phase of the development.
- 7. 8. Maintenance. All areas and improvements required by Special Condition II-B-4, including hardscape, landscaping, signs, and public paths shall be permanently maintained by, and at the expense of, the permittees, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, repairs to all path and hardscape surfaces, replacement of any plant material that dies or becomes unkempt, repairs or replacement as needed of benches, trash containers, signage and irrigation devices, restoration of any shoreline or other area that becomes eroded or damaged by wave action, storm, or other deterioration, and assuring that public access signs remain in place and visible. Within 90 days after notification by staff of the Commission, the permittees or any successor or assignee shall correct any maintenance deficiency noted by the staff.

8. 2. **Reasonable Rules on Use of Public Access Areas.** The permittees may impose reasonable rules on the use of the areas required to be provided for public access provided such rules are first approved by or on behalf of the Commission and do not significantly affect the public nature of the area nor unreasonably burden public use.
9. 10. **Event Clean-Up Plan.** The permittees shall submit a plan for the clean-up of the public access areas used during public events. The plan should be based on the plan submitted in the permittee's application for Amendment No. Seven and shall be approved by or on behalf of the Commission.
10. 11. **Vehicular Use of Public Access Areas**
- a. **Parking.** No parking whatsoever shall be permitted within the public access areas required under this amended permit, except as specifically authorized herein.
  - b. **Vehicular Use.** Vehicular use of the public access areas authorized herein shall be restricted to service, delivery vehicles, and drop off purposes. Service and delivery access shall be limited to the hours prior to 11 a.m. Access for the infirm and handicapped shall be permitted but shall be managed according to a vehicular access plan as required below.
  - c. **Vehicular Access Plan.** Prior to June 1, 1986, the permittees shall prepare and submit for review and approval by or on behalf of the Commission pursuant to Special Condition II-A, a vehicular access plan which will describe which areas may be used for vehicular access, under what conditions, and specifically describing how the vehicular access plan will be enforced.

**C. Marina Conditions**

- 1. **Construction.** Construction standards for marina berths and associated facilities shall be at least equal to those established by the California Department of Boating and Waterways. All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.
- 2. **Waste Discharge.** The discharge of any solid or liquid wastes, including oily bilge water, waste oil, or sewage into the Bay within the marina basin shall be in accordance with federal and state regulations.
- 3. **Waste Facilities.** Prior to the use of any berth, the permittees shall assure there is available and convenient, suitable facilities for receiving and disposing of oily bilge water and waste oil, at least one facility for pumping out vessel holding tanks and receiving wastes from portable toilets in locations easily accessible by boats, and onshore toilet facilities for the marina tenants. Such facilities shall be constructed to all applicable codes and standards, shall be connected to onshore waste treatment facilities, and shall be maintained by the permittees in a safe and sanitary manner. Such facilities shall be available to boaters every day of the week and any fees for the

use of the facilities shall be limited in amount to cover the cost of the installation, operation, and maintenance of the facilities.

4. **Enforcement Responsibility.** The permittees shall adequately enforce the requirements herein, and shall submit to the Commission the name, address, and telephone number of the person at the marina responsible for such enforcement.
5. **Houseboats and Live-Aboards.** No houseboat, floating structure, or vessel used for residential purposes shall be moored at the marina.
6. **Sales or Long-Term Rental of Berths.** No right to use an individual berth shall be granted or otherwise transferred that exceeds one year in duration.

**D. Covenant Not to Sue or Seek Indemnification for Damages**

1. By execution of this amended permit, the permittees releases from any present or future liability whatsoever and covenants on behalf of itself and its successors not to sue or otherwise seek legal redress against the San Francisco Bay Conservation and Development Commission and/or the permittees' and any other port authority's shipping and terminal tenants for damages to the marina facilities or for any other relief based either directly or indirectly on wave action or other actions which affect the marina facilities and that arise out of the use of the Oakland Estuary for navigation or waterborne commerce, whether or not said action or actions constitute passive or active negligence, provided that this release and covenant shall not prohibit permittees from seeking such damages or other relief (a) from or against any person or entity whose intentional and wrongful act is the proximate cause of damages or losses to permittees, or (b) for any trespass on or wrongful physical invasion of the marina by tangible objects such as vessels, but excluding any trespass or invasion by means of noise, light, vibrations, smoke, air currents, water waves or turbulence, or electronic or other emissions resulting from the operation of vessels or marine terminals in the Oakland Estuary, so long as said operations comply with all laws, rules, and regulations that apply to the use of the Oakland Estuary for navigation or waterborne commerce. The legal actions covered by this release and covenant shall include, but not be limited to, damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with the use or enjoyment of property, nuisance, or inverse condemnation, for injunctive or other extraordinary or equitable relief from normal navigation, waterborne commercial, or port-related operations within the Oakland Estuary.
2. In any deed, lease, license agreement, or other instrument that conveys either an interest in or right to use a marina berth or berths, the permittees or its their assignees or leasees shall include in the deed, lease, license agreement, or other transfer instrument a term or condition by which the purchaser, lessee, licensee, or transferee (herein after collectively referred to as "transferee") releases from any present or future liability whatsoever and covenants on behalf of himself and his successors not to sue the Commission and/or the permittees' and any other port authority's shipping

and terminal tenants for damages to the transferee's property used in connection with or located at the marina, or any other relief based directly or indirectly on wave action or other actions which affect the transferee's said property or the transferee's use or enjoyment of the marina, or which result in any bodily or personal injury to the transferee as a result of the transferee's use of the marina (including access by way of the Oakland Estuary to or from the marina), and that arise out of the use of the Oakland Estuary for navigation or waterborne commerce, whether or not such action or actions constitute passive or active negligence, provided that this release and covenant shall not prohibit the transferee from seeking such damages or other relief (a) from or against any person or entity whose intentional and wrongful act is the proximate cause of damages, injuries, or losses to transferee, or (b) for any trespass on or wrongful physical invasion of the marina by tangible objects such as vessels, but excluding any trespass or invasion by means of noise, light, vibrations, smoke, air currents, water waves or turbulence, or electronic or other emissions resulting from the operation of vessels or marine terminals in the Oakland Estuary, so long as said operations comply with all laws, rules, and regulations that apply to the use of the Oakland Estuary for navigation or waterborne commerce. The release and covenant shall cover the same legal actions that the release and covenant required by Special Condition II-D-1 covers.

3. The permittees agrees to and shall defend, hold harmless, and indemnify the Commission, and/or the permittees' and any other port authority's shipping and terminal tenants from any and all liability, including without limitation, civil penalties, fines, business losses, and additional expenses, that arise out of any act, event or occurrence which would come within permittee's or any transferee's release and covenant not to sue under Special Condition II-D-1 and Special Condition II-D-2. For purposes of Special Condition II-D-3, any person using the marina shall be deemed to be a transferee, and any property at or being used in connection with the marina shall be deemed to be the property of a transferee. The hold harmless and indemnification shall cover the same actions that the release and covenant required by Special Condition II-D-1 covers.
4. In any deed, lease, license agreement, or other transfer instrument covered under Special Condition II-D-2, the permittees shall include in the deed, lease, license agreement, or other transfer instrument a term or condition by which the transferee agrees to defend, hold harmless, and indemnify shipping and terminal tenants and shipping users from any and all liability, including without limitation, civil penalties, fines, business losses, and additional expenses that arise out of any act, event or occurrence which would come within any transferee's release and covenant not to sue under Special Condition II-D-2 and which involves the transferee. For purposes of Special Condition II-D-4, any person using the marina shall be deemed to be a transferee, and any property at or being used in connection with the marina shall be deemed to be the property of a transferee. This hold harmless and indemnification shall cover the same legal actions that the release and covenant required by Special Condition II-D-1 covers.

5. **Liability Insurance.** The permittees shall maintain in force at all times public liability and property damage insurance, including personal injury, broad form property damage, blanket contractual, completed operations and products, with such limits as may be reasonably requested by the Commission from time to time, but in no event for less than the sum of TEN MILLION DOLLARS (\$10,000,000.00) combined single limit; and the permittees agrees that the Commission, and/or the permittees' and any other port authority's shipping and terminal tenants shall be named as additional insureds under such liability insurance policy or policies.

All such policies shall be endorsed with a severability of interest or cross-liability endorsement, reading generally as follows: "Cross-Liability -- In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability."

A certificate or certificates, in a form provided by the Commission or reasonably satisfactory to the Commission, evidencing such insurance coverage shall be filed with the Commission prior to the commencement of any work under this amended permit, and said certificate(s) shall provide that such insurance coverage will not be canceled or reduced without at least 30 days prior written notice to the Commission. At the Commission's request from time to time, the permittees shall promptly provide to the Commission complete copies of liability insurance policies maintained pursuant to this amended permit. At least 15 days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Commission. If such coverage is canceled or reduced, the permittees shall, within 15 days after receipt of written notice from the Commission of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, file with the Commission a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

E. **Debris Removal.** All construction debris shall be removed to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees, its their assigns or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

F. **Notice to Berth Renters.** The permittees shall provide a copy of this amended permit to every berth renter calling his or her attention to Special Conditions II-C and II-D of this amended permit.

G. **Assignment.** The permittees may make a full or partial assignment to the rights and/or duties under this amended permit provided that the assignee is acceptable to the Commission. The assignment shall be made in writing and clearly indicate which portions are assigned and which

portions remain unassigned. Any assignee shall sign a written statement to the effect that he or she has read and understands the conditions of this amended permit and agrees to be bound by all terms and conditions hereof.

H. **Permit Recording.** The permittees shall record this amended permit or a notice referring to this amended permit with the County of Alameda within 60 days after execution of this amended permit and shall provide evidence of recording to the Commission.

### III. Findings and Declarations

#### A. Use

1. **Bay Plan.** San Francisco Bay Plan Map No. 4 does not designate the project site for any priority uses but a note on the map states: "JACK LONDON SQUARE. Expand commercial recreation facilities as needed. Provide continuous public access along Estuary to Lake Merritt Channel." The proposed use of the site as commercial recreation development which provides continuous shoreline access is consistent with the Bay Plan.
2. **Seaport Plan.** Areas to the east, the west, and across the Estuary are designated for marine terminal use in the Seaport Plan. The use of the Jack London Square area for a small craft recreational marina could be inconsistent with the Seaport Plan if it interferes with the existing use of the estuary for port purposes. The construction of a small boat marina expansion in the vicinity of a port operation raises liability issues for shippers. The wakes of passing ships and wash from turning ships can cause waves and surge in the marina that could result in wear and chaffing or swamping of small boats in the marina. If shippers find that using the area would expose them to liability they may select other ports of call or additional fill in the Bay may be requested in areas where the conflict between shipping and recreational boating does not exist. In order to assure that the project does not result in additional fill and does not impair the efficient utilization of the adjacent port area, the Commission finds that Special Condition II-C must be imposed.

B. **Fill.** The permittees will place a total of 31,247 square feet of Bay fill, including fill for berths, public access, and to improve shoreline appearance.

1. **Fill for Marina.** The fill for the marina berths is for a water-oriented use and can be authorized so long as the fill is the minimum necessary. The expansion of the marina is modest and the berths are sized to fall within Department of Boating and Waterways guidelines for such facilities. Therefore, the Commission finds that the fill for the marina berths is the minimum necessary for the proposed use.
2. **Fill for Public Access.** The Commission's policies allow minor amounts of fill for providing new public access if there is inadequate public access in the area. The site includes three existing buildings located directly on the edge of the Bay (the Boatel, Scott's, and the Grotto). There are 7-foot-wide wooden walkways on fill bayward of

the Boatel and Scott's. The proposed fill would replace these narrow walks with wider walkways, some seating and viewing areas, and observation decks. In addition, the permittees will provide public short-term boat docks for public access from the Bay to the shoreline. Placement of the new wooden walkways is the only way to provide continuous shoreline access around the Boatel and Scott's. Furthermore, the Design Review Board found the fill necessary to provide attractive useable public walkways bayward of these structures. The public boat docks will promote Bay-to-shore access and are the only public facilities of this type in the Jack London Square area. The fill for tidal stairs and observation platforms will provide design elements within the overall public access design, create opportunities for the public to get close to the water's surface, and enhance views from the public access areas to the surface waters of the narrow Estuary. The fill for the ferry docks, authorized in Amendment No. Four will provide access to public transportation, including handicap access, and will provide a place for the public to sit near the Bay. Therefore, the Commission finds the proposed fill is needed to provide public access and is the minimum amount necessary.

3. **Amendment No. Seven.** Several minor modifications to the fill quantities in the original permit are made by this amended permit to reflect minor modifications to the project's design and to correct errors and omissions from earlier amendments to the permit. In Section I-A-1-e, the authorized fill increases from 5,500 to 6,263 square feet to reflect the actual amount of solid and pile supported fill placed to improve public access and shoreline appearance at the foot of Broadway. The original 5,500-square-foot fill total was derived from imprecise conceptual design drawings.

Further, in Section I-D the total amount of fill is increased from 26,500 to 31,247 square feet to reflect: (1) the 763-square-foot increase in I-A-1-e; (2) the 2,724 square feet of fill for a ferry barge and gangway authorized in Amendment No. Four; and (3) the 1,260-square-foot public ferry pier authorized in Amendment No. Four.

4. Material Amendment No. Eight to this permit authorizes the relocation of an existing, 1,600-square-foot barge affixed to four, four-square-foot piles with a 175-square-foot launching float attached. The barge is being relocated to facilitate its use, in conjunction with the launching float, as primarily a small boat launching facility. The barge will also continue to be used periodically for tour and dining yacht berthing and for other transient boat tie-up as needed. The fill is water-oriented in nature and will serve primarily to facilitate the public's use and enjoyment of the Bay by providing a safe, convenient small-boat launch which also provides small boat access to the Bay for people with handicaps, consistent with the requirements of the Americans with Disabilities Act (ADA) and California Title 24.

4. 5. **Fill for Improving Shoreline Appearance.** The Commission's policies allow minor fill to improve shoreline appearance if the appearance of the shoreline adversely affects enjoyment of the shoreline. Adjacent to the Boatel is a small inlet which will be inland of the public access boardwalk. The permittees proposes to construct a 300-square-foot portion of a restaurant within the Boatel over this inlet. The public access

walkway will be reconstructed and built as a link to the large public plaza at the foot of Broadway. The Design Review Board found the overall exterior of the facade of the Boatel expansion would be attractive. Therefore, the minor fill will improve the shoreline appearance, and be the minimum amount necessary. The awning authorized by Amendment No. Six will not adversely impact the appearance of the shoreline nor public access.

**C. Public Access.** The project will provide a total of 2.35 acres of public access along the entire 1,875-foot length of shoreline of the site, or approximately 42 percent of the shoreline band. The access will consist of a continuous shoreline walkway with larger plaza areas at the foot of Broadway and between Scott's Grill and the Grotto Restaurant and will include 2,830 square feet of public access already provided by Scott's in BCDC Permit No. M84-94. There will also be public access on the ferry pier.

The access provided is much less than the Commission has required in other urban, mixed use developments, even those with existing structures. For example, in 1980, the Commission authorized Alameda Marina Village directly across the Estuary. On the 206-acre site, the Commission required 286,000 square feet of shoreline band along the one-mile of shoreline, which is over 50 percent of the shoreline band. In addition, the Commission required 126,000 square feet of public access on fill.

The Design Review Board reviewed the project on three occasions and only one Board member found that the project would provide maximum feasible public access. However, when the area for public access on fill--boardwalks and piers--is added to the area provided in the shoreline band, a total of 102,430 square feet or 2.35 acres, the Commission finds that the minimum threshold for maximum feasible public access is met and provided by the overall project.

The design of the public access area is also of considerably less quality than other projects approved by the Commission. In this redevelopment project, the Port has the opportunity to create a major civic achievement on the level of other urban waterfront developments around the nation. The Design Review Board expressed its frustration that the Port is foregoing the opportunity to develop a public plaza where Broadway, Oakland's major city street, meets the Estuary. This site has considerable historic, cultural, and urban design significance. Yet the Port has chosen to largely ignore the public value of the area by allocating it to the expansion of the Boatel. As a result, one Design Board member concluded: "There's no square there," referring to the fact that Jack London Square (the plaza at the foot of Broadway around the bust of Jack London) will be little more than an extension of a vehicle turn-around area. The Board also noted that the focus of activities--the eating pavilion and retail shops--will be inland, and that no major civic spaces face directly onto the waterfront. The waterfront area is designed as a secondary space instead of as a focus for public assembly and a center of activity for members of the public who cannot or choose not to patronize the hotels, shops, and restaurants.

The Commission shares the conclusions of the Design Review Board that the design of the project is not the highest quality and that the project will not realize the full potential of this unique urban waterfront location. However, the Commission finds that the project will provide sufficient space for public access for the project to be approved.

**Public Access Use Modifications (Amendment No. Seven)**

Amendment No. Seven authorizes the permittees to: (1) use dedicated public access areas for regularly scheduled, publicly oriented events including fairs, festivals, concerts, a farmer's market and some events charging paid admission; (2) use up to 500 square feet of dedicated public access area for limited commercial activities, including small retail kiosks or carts for vending food or merchandise; and (3) improve approximately 900 square feet of an existing plaza for outdoor dining as part of the Old Spaghetti Factory Restaurant. The Port is dedicating 18,189 square feet of an existing public plaza for permanent public access to offset the public access impacts of the project.

The use of the dedicated public access areas for publicly-oriented events will enliven and increase the use of the underutilized public access in the Jack London Square area. The events proposed by the permittees do not charge admission, are of limited duration and would be consistent with the intended and anticipated uses of the public access spaces. The Bay Plan findings on recreation state in part, that, "a major supplement to parks, marinas, and other forms of water-oriented recreation are the several areas of water-oriented commercial recreation and public assembly that have been developed around the Bay, such as....Jack London Square in Oakland...Additional commercial recreation and public assembly are desirable uses of the shoreline if they permit large numbers of persons to have direct and enjoyable access to the Bay. These uses can often be provided by private development at little or no cost to the public support authorization of this project."

Special Condition II-B-2-a requires the permittees to submit a schedule of proposed events annually accompanied by a site plan describing each event's location for review and approval by, or on behalf of the Commission. This will enable the Commission staff to monitor the amount, frequency, duration, size, and other aspects of events to ensure that the public's use of the dedicated public access areas is not compromised.

The limited commercial activities authorized by this amendment are small-scale carts and stands for vendors which will not singly nor collectively serve to constrain the public's use of the public access areas. The Bay Plan policies on recreation, in part, state that, "limited commercial recreation facilities...should be permitted within waterfront parks provided that they are clearly incidental to the park use, are in keeping with the basic character of the park and do not obstruct public access to and enjoyment of the Bay."

Special Conditions II-B-2-b and II-A require staff review and approval of individual kiosks for use, design and location. The review will ensure that all approved kiosks will compliment the public access areas and uses in the Jack London Square area and provide for the needs of the recreating public without impeding its use of the public access areas.

These limited, non-public uses of the public access areas may help to bring larger numbers of persons to the public access areas than otherwise might use them and, therefore, help publicize the areas public availability. The limited nature of the non-public use will not substantially interfere with the public nature of the area. Special Condition II-B-2-d provides that the uses of the public access areas authorized in Amendment No. Seven are authorized for the limited term of seven years

to allow the Commission to reevaluate these uses and the related impacts, if any, on public access. This requirement provides an additional mechanism for ensuring the public access areas remain open and accessible to the public.

Amendment No. Three, which permitted the construction of a 472-square-foot restaurant addition, a 230-square-foot entry canopy and landscaping was incorporated into Amendment No. Seven since the Port failed to pursue the amendment request by submitting requested information in a timely manner, and the amendment request was not returned unfiled pursuant to Regulation Section 10351. The application lay dormant until its rediscovery arising from the request for Amendment No. Seven. The Port has already completed the work for which authorization was requested and modified the proposal project consistent with the comments of the staff and the Design Review Board. Therefore the Commission finds the work proposed in the application for Amendment No. Three will not have a detrimental affect on public access.

The project authorized in Amendment No. Eight modifies the design and use of the existing, dedicated public access plaza lying between Kincaid's and Scott's Restaurants in Jack London Square. This amendment authorizes the construction of a 4,400-square-foot pavilion in the plaza to be used for public access purposes eighty percent of each year (292 days) and for private events hosted by Scott's Restaurant twenty percent of each year (73 days). The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately 20 percent of each year. In addition, the covering of the public access space could reduce the public character of the plaza, thereby discouraging the public's use of the plaza.

The site for the public access pavilion is part of a large (32,300-square-foot), L-shaped, public space which receives relatively little public use, in part because its primary function is as a service vehicle access to the two restaurants and retail shops. The lack of activities fronting on the plaza combined with the service vehicle activity significantly diminish the value of the plaza as a public space. The California Canoe and Kayak rental and sales business has significantly enlivened this plaza with its colorful kayaks and the activity generated by frequent classes and canoe and kayak rentals. However, the backs of buildings generate little life in plazas. Approximately 290 feet of the 330 feet of walls framing this plaza are the rear or service entry of the buildings, while only 40 feet are fronts.

The introduction of the pavilion could generate activities in the plaza which do not occur there now because of the existing building and use configuration. The private banquet events may bring people to Jack London Square who would not otherwise visit the shoreline and it may serve as a catalyst for future visits to the Square and will likely generate additional sales for other businesses in the Square. The pavilion will also be used by other, more public events which require cover or protection from inclement weather, including the Farmers' Market, art shows, product displays and boat show displays.

The existing barge on the southeast side of the plaza will be relocated closer to the shoreline to be shared by the existing kayak rental and sales business for launchings associated with classes it offers, by tour and dining yachts as a transient boat tie-up and for public access. Special Condition II-B-3 provides that the 1,600-square-foot barge and the 175-square-foot launching float

be used for public access including small boat launching, tour and dining boat tie-up and swimming access to the Estuary. Relocating the float and programming its use as described should increase the activity in the plaza, while increasing the on-going commercial use of the plaza area. Increased human activity in the area is desirable since the plaza is relatively underutilized by the public. However, the relocated barge and head float will primarily provide more convenient access for customers of the California Canoe and Kayak shop for launching in the Oakland Estuary and will provide an additional berth for private dining and tour boats. Given the public access use and dedication requirements in this amended permit, the Commission finds that this limited commercial use on the floating fill is appropriate.

Amendment No. Eight authorizes the private use of the public pavilion for twenty percent of the time or up to seventy-three calendar days per year. Special Condition II-B-3 requires that this private use be scheduled consistent with the guidelines specified in Exhibit E to this amended permit. The scheduling guidelines define two types of use periods: (1) May through October will be the higher public use period; and (2) November through April will be the lower public use period. There are approximately one-hundred-and-six weekend days each year or approximately nine weekend days per month. During the higher public use period (May through October), the private events are limited to a maximum of three weekend days per month on-average, with six weekend days required for public use. There is a minimum requirement of three weekend days per month free of private events. This allows the permittees to exceed the three events per month limit, but requires that it meet the overall requirement by having fewer events in subsequent months during the higher use period. During the lower public use period (November through April), the permittees are allowed to schedule up to four private events per month on weekend days, on average, and will be required to reserve at least five weekend days on average for public use. The permittees are required to provide a minimum of three public-use weekend days per month, and must average the private use to conform with the four-day-per-month average allotment. The total event allotment for one year is seventy-three. The Commission finds that the private event use will not adversely impact the public's use and enjoyment of the plaza, provided that the schedule of events approved by the Port adheres to the guidelines specified in Exhibit E to this amended permit.

The Commission's public access design guidelines state, in part, that: "public access should generally be open to the sky...be designed to be usable by the greatest number and diversity of people, including the physically handicapped." The project will provide a covered, open outdoor area for all users of the wharf. The towers will be visible above the adjacent buildings to attract passersby from a distance and signal users to explore the waterfront. The open-truss structural system allows for longer spans with less intermediate supports, thus preserving views of the Bay. The structure does not significantly impede existing shoreline access nor will it unduly interfere with the existing access to the wharf edge. The proposed pavilion will have a minimal impact on existing view corridors and sight lines of the Oakland Estuary. The feeling of openness achieved through the use of slender structural columns and the open truss system will minimize sight line obstructions. The project will modify the existing paving pattern to coordinate with the outline of the proposed structure. The Design Review Board noted that the existing paving pattern directs one's eye along the existing view corridor to the ships on the opposite shore. The revised paving pattern will preserve this feature to the greatest extent feasible.

The pavilion will be supported by columns similar in color and shape to pedestrian scale lighting in the square, will be outfitted with neon signs atop the towers naming the structure "Public Pavilion" and the paving pattern in the plaza will be modified to reflect the overhead pavilion while utilizing paving materials consistent with the existing paving. However, the covering of the public access space could reduce the public character of the plaza, thereby discouraging the public's use of the plaza. The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately twenty percent of each year. The proposed pavilion will be situated to provide an unobstructed, 34-foot-wide view corridor from Water Street to the estuary approximately 80 percent of the time when the facility is open for public use. The existing view corridor width through this plaza is approximately 57 feet wide. The authorized pavilion design will maintain an 18-foot-wide view corridor through the plaza to the shoreline during private events. Special Condition II-B-6 requires the installation of binoculars for public use, benches, flags, lighting, and cafe seating to furnish the pavilion, enhancing its utility to the public for daily use.

The Commission finds that the public access improvements sufficiently offset the potential for the pavilion to privatize the existing plaza and that these enhancements will improve overall the public's use and enjoyment of the existing plaza so that the net effect of the project, given the periodic unavailability of the plaza, will result in an overall enhancement of the public access. The Commission finds that the design of the proposed pavilion will be sufficiently congruous with and complements the existing development in the area and will enhance the public's use of the existing dedicated public access areas. The Commission also finds the proposed view corridor adequately preserves views of the Estuary and Alameda shoreline. The Commission also finds that the private use is incidental to the public access use, is in keeping with the character of the area and will not unduly obstruct public access to and enjoyment of the Bay. The Commission finds therefore, that the authorized pavilion construction and private use of the public access area will contribute to the public's use and enjoyment of a public access area which is currently underutilized. Finally, the Commission finds that the public access required in this amended permit will provide the maximum feasible public access, consistent with the original Jack London Square project as modified through Amendment No. Eight to this permit.

Amendment No. Eight authorizes, on a temporary basis, tent-covered banquet use of the dedicated public access plaza until January 15, 1996. At the time that the Port first proposed the tent use to the staff in April of 1993, the staff had concerns that approving the tent use on a permanent basis would be inconsistent with the requirements of amended BCDC Permit No. 19-85 and with the Commission's Bay Plan policies on public access. Moreover, after viewing the plaza with the tent in it, the staff determined that the tent effectively blocked the existing view corridor from Water Street out to the estuary and the Alameda shoreline. However, the Commission finds that authorizing the temporary continuation of the temporary, periodic tent use will not unreasonably detract from the public's current, limited use and enjoyment of the area, because the tent use is only temporary in nature and under the existing conditions, the public's use of the area is limited.

At the request of the original permittee, the Port of Oakland, and its tenant Scott's Jack London Seafood, Inc., revised Amendment No. Eight has incorporated Scott's Jack London Seafood, Inc., as a co-permittee for that portion of the project that is included within its leasehold.

PERMIT NO. 19-85  
(Issued on March 13, 1986, As  
Amended Through February 13, 1996)  
REVISED AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)  
Port of Oakland and  
Scott's Jack London Seafood, Inc.  
Page 23

The rights, duties, and obligations of Scott's Jack London Seafood, Inc., with regard to this amended permit are limited to the area leased by Scott's Jack London Seafood, Inc., from the Port of Oakland. As a co-permittee, the Port of Oakland will also be jointly and severally liable for full compliance with all terms and conditions of the permit that apply to the leasehold area. Beyond the leasehold area, only the Port will be liable for full compliance with all terms and conditions of the permit.

**D. Water Quality.** Discharges from the proposed marina could adversely affect Bay water quality if not properly controlled. Special Condition II-C requires that the proposed marina be equipped with suitable facilities to be made available to the boating public for receiving and disposing sewage and other wastes. Special Condition II-B-4-1 requires the installation of restrooms for public use. These conditions assure that the project as authorized will not adversely affect the quality of Bay waters.

**E. Public Trust.** The project area was granted to the City of Oakland by the State to be used for public trust purposes. Therefore, the lands have to be administered in accordance with the trust grant. The tidal area within the Commission's jurisdiction will be used for a marina, a water-oriented use, or for improving shoreline appearance and public access. Therefore, the Commission finds that the proposed project is consistent with public trust needs.

**F. Environmental Review.** The original permittee, the lead agency for the proposed project, prepared an Environmental Impact Report for Jack London Square--Phase I Development Plan. The final Environmental Impact Report was certified by the original permittee on March 1, 1983, and a supplemental final Environmental Impact Report certified by the original permittee on December 4, 1984. The Commission finds that, as conditioned herein, the proposed project will not have a significant adverse environmental impact on the Bay.

On March 8, 1991, the Port of Oakland Commission certified the "Addendum to the Supplemental Final Environmental Impact Report--Central Area Project--Jack London Square" which assesses the environmental impacts of the ferry terminal project authorized by Amendment No. Four to this permit. On April 21, 1993, the Port of Oakland determined that the project authorized in Amendment No. Seven to this permit was exempt from the requirement to prepare an environmental report on the project, citing Sections 15303 (e) and 15304 (e) of the California Environmental Quality Act (CEQA), Classes 3 and 4. On March 22, 1995, the Port of Oakland determined that the project authorized in Amendment No. Eight to this permit was exempt from the requirement to prepare an environmental report on the project, citing Sections 15303 (e) and 15304 (e) of the California Environmental Quality Act (CEQA), Classes 3 and 4.

**G. Conclusion.** For all of the above reasons, the benefits of the proposed project clearly exceed the detriment of the loss of water areas and the project will provide maximum feasible public access to the Bay and its shoreline. Therefore, the project is consistent with the San Francisco Bay Plan, the McAteer-Petris Act, the Commission's Regulations, and the coastal management program for San Francisco Bay.

#### IV. Standard Conditions

A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. Work must be performed in the precise manner and at the precise locations indicated in your application and amendment requests, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

D. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittees will be subject to the regulations of the Regional Water Quality Control Board in that region.

~~E. The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the application and amendment requests for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.~~

E. The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittees/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

F. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

G. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

H. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittees or its their assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

I. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittees or its their assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittees or its their assignee if the amended permit has been assigned.

J. This amended permit shall not take effect unless the permittees executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit.

L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction up to the line of highest tidal action.

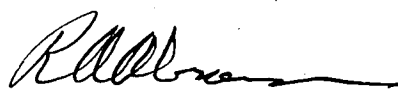
M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or its their assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

PERMIT NO. 19-85  
(Issued on March 13, 1986, As  
Amended Through February 13, 1996)  
REVISED AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)  
Port of Oakland and  
Scott's Jack London Seafood, Inc.  
Page 26

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation  
and Development Commission on the date first above written.

WILL TRAVIS  
Executive Director  
San Francisco Bay Conservation and  
Development Commission

By:

  
RUSSELL A. ABRAMSON  
Assistant Executive Director  
for Administrative Services

RAA/SAM/tr

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board,  
Attn.: Certification Section  
Environmental Protection Agency, Attn.: Mike Monroe, W-3-3

\* \* \* \* \*

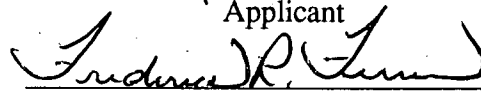
Receipt acknowledged, contents understood and agreed to:

Executed at Oakland, CA

Port of Oakland  
Applicant

On 2/21/96

By:

  
Director of Engineering  
Title

\* \* \* \* \*


Receipt acknowledged, contents understood and agreed to:

Executed at Oakland, CA

Scott's  
Applicant

On 3/6/96

By:

  
Pres.  
Title

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

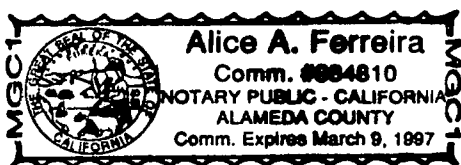
State of CALIFORNIA

County of ALAMEDA

On February 22, 1996 before me, ALICE A. FERREIRA, a Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared FREDERICK R. FERRIN,  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Alice A. Ferreira*  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER

Director of Engineering  
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

Port of Oakland

### DESCRIPTION OF ATTACHED DOCUMENT

BCDC Permit No. 19-85 (Issued on March 13, 1986, as Amended Through February 13, 1996)  
TITLE OR TYPE OF DOCUMENT

26

NUMBER OF PAGES

February 21, 1996

DATE OF DOCUMENT

Russell A. Abramson  
Assistant Executive Director  
SIGNER(S) OTHER THAN NAMED ABOVE for Administrative Services

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

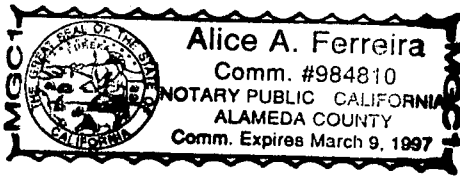
State of CALIFORNIA

County of ALAMEDA

On March 7, 1996 before me, Alice A. Ferreira, a Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared R. J. GALLAGHER,  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Alice A. Ferreira*  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER  
President  
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

BCDC Permit No. 19-85 (Issued on  
March 13, 1986 as Amended Through  
February 13, 1996  
TITLE OR TYPE OF DOCUMENT

26 Pages  
NUMBER OF PAGES

February 21, 1996  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

Scott's Jack London Seafood, Inc.

Russell A. Abramson  
Frederick R. Ferrin

SIGNER(S) OTHER THAN NAMED ABOVE

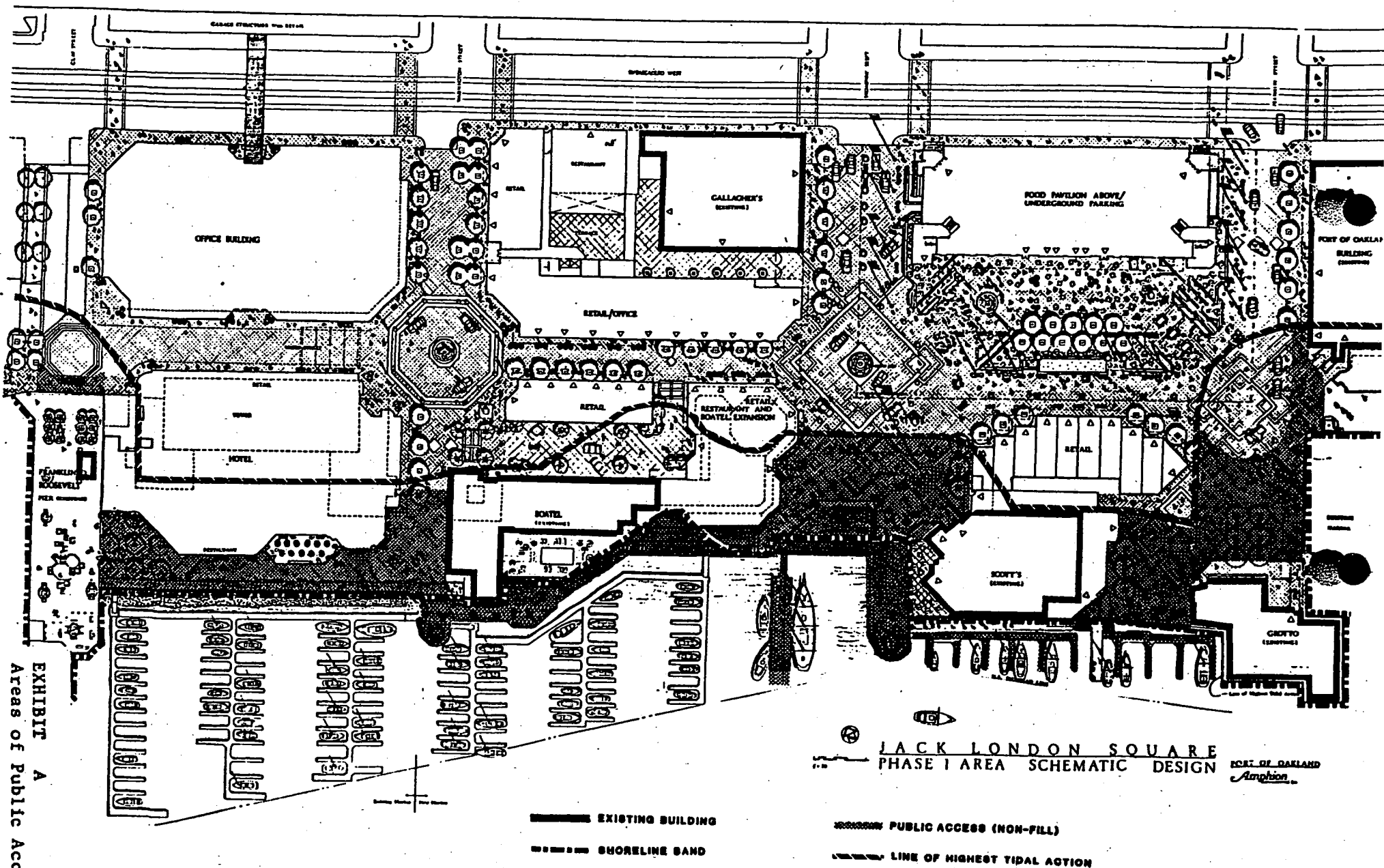
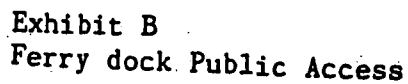
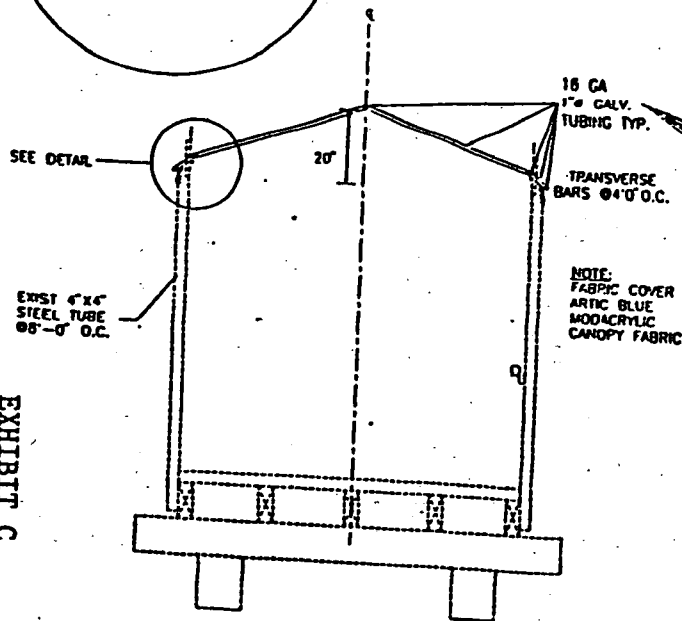
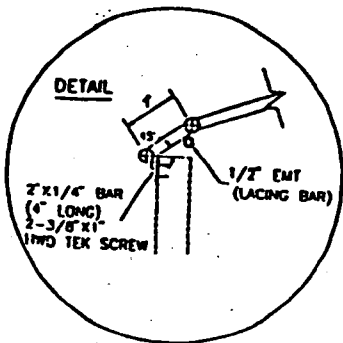


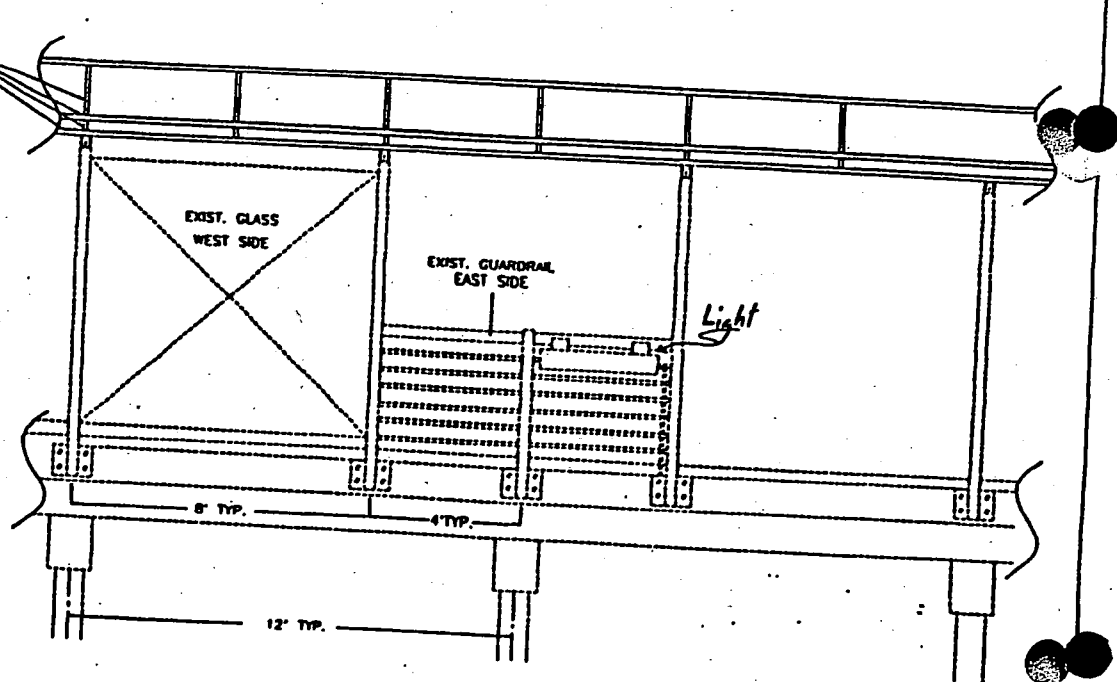
EXHIBIT A  
Areas of Public Access

## PROPOSED DEVELOPMENT





**SECTION**  
N.T.S.

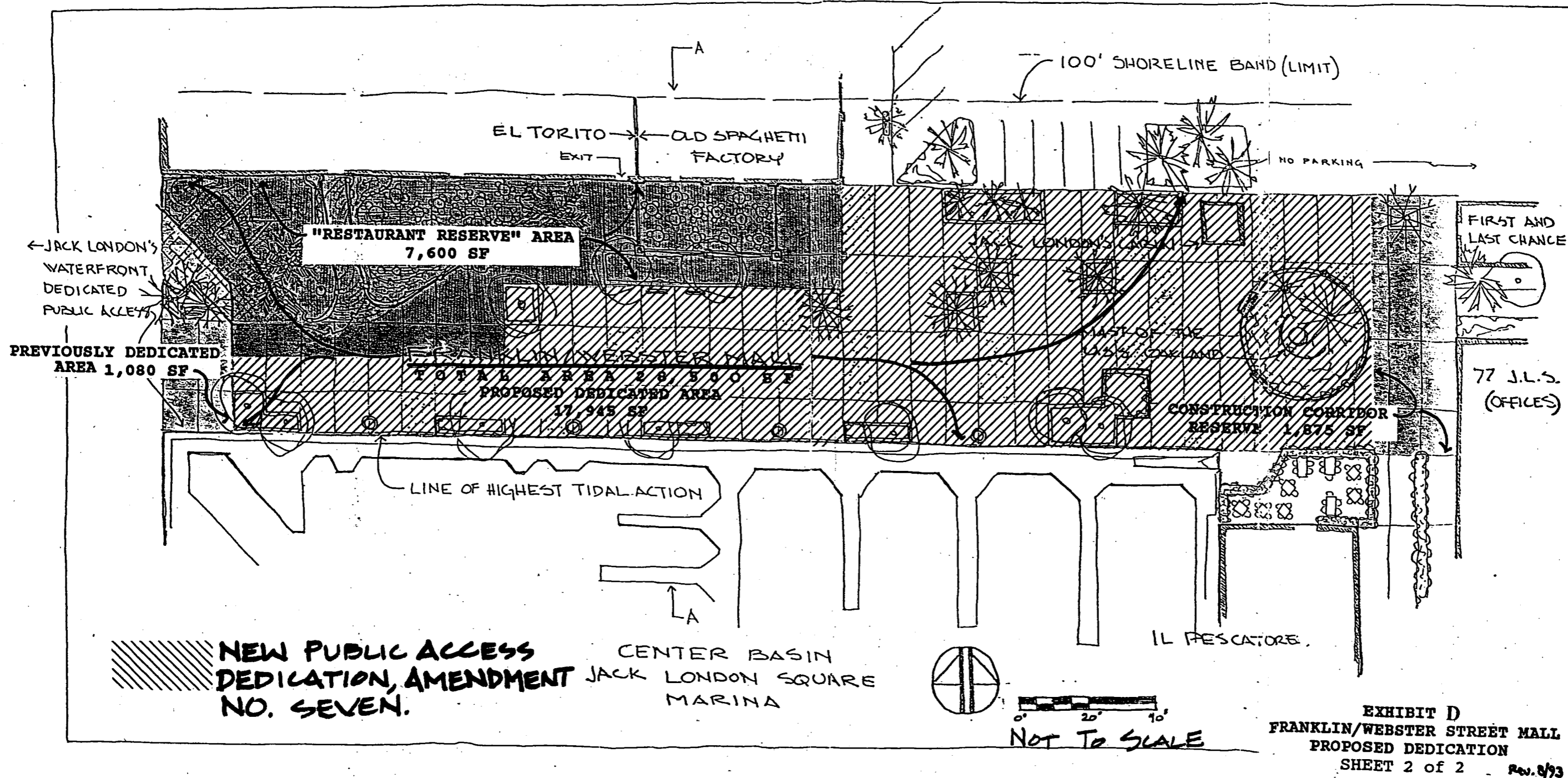


**ELEVATION**  
N.T.S.

**EXHIBIT C**  
**FERRY DOCK CANOPY**

REVISIONS DATE FIELD NO. NAME OF DRAWING NO. OF SHEETS	PROJECT NO. PROJECT NAME PROJECT LOCATION	DRAWN BY CHECKED BY APPROVED BY	<b>PORT OF OAKLAND</b> 530 VINTAGE STREET OAKLAND, CALIFORNIA	CLIENT ENGINEER NAME FIRM	JACK LONDON SQUARE FERRY CANOPY-ELEVATION & SECTION	DATE DRAWN BY CHECKED BY APPROVED BY
--	---	---------------------------------------	--	---------------------------------	---	---

92217756



# **GUIDELINES FOR PRIVATE USE OF PUBLIC PAVILION**

Permit No. 19-85--Exhibit E

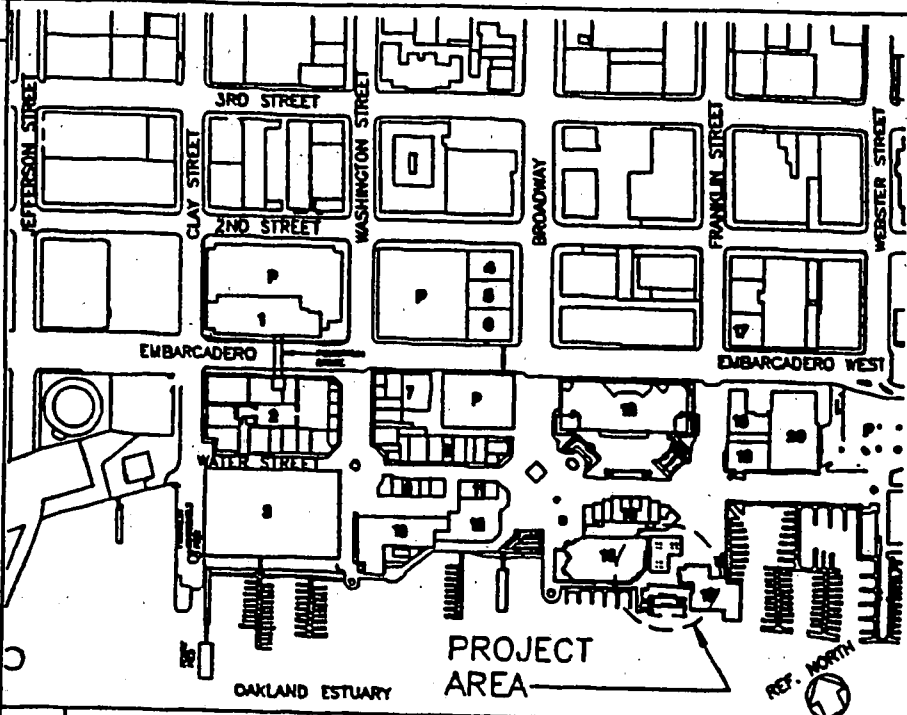
	Public Use of the Pavilion	Private Use of the Pavilion	Percentage of Private Use of Pavilion during high use periods (weekend days/nights)
Percentage of use per year.	80%	20%	
Number of days available per year for use of the public pavilion.	292	73	
No. of weekend days/nights* to be made available for use of the Pavilion on average per month from May through October	6	3	33%
Minimum no. of weekend days/nights for Public Use in any month	3		
No. weekend days/nights* to be made available for use of the Pavilion on average per month from November through April	5	4	40%

\*weekend nights = Friday and Saturday;      weekend days = Saturday and Sunday

1. Scott's will submit a quarterly calendar of proposed private events for Port approval. The events calendar will include a time estimate of each individual event, including set-up and take-down times consistent with each event.
2. The Port will transmit a copy of the approved quarterly events calendar to BCDC staff for its information.
3. The Port will closely monitor the use of the pavilion for private events to ensure compliance with the 20-percent maximum private use limit.
4. The Port will not approve more than two consecutive private events at any time.
5. Scott's will coordinate with the Port's Marketing Director to eliminate conflicts between private events and any public events.
6. Scott's will not lower the fabric curtains prior to one (1) hour before a private event and will retract the curtains within one (1) hour after a private event.
7. Scott's will be responsible for the repair and maintenance of the pavilion structure, the outdoor tables and chairs and the binoculars.
8. Scott's will be responsible for the daily clean-up of the area beneath the pavilion structure.
9. The Port, Scott's and BCDC staff will review these guidelines within six (6) months of the first private event to determine if additional guidelines are necessary.

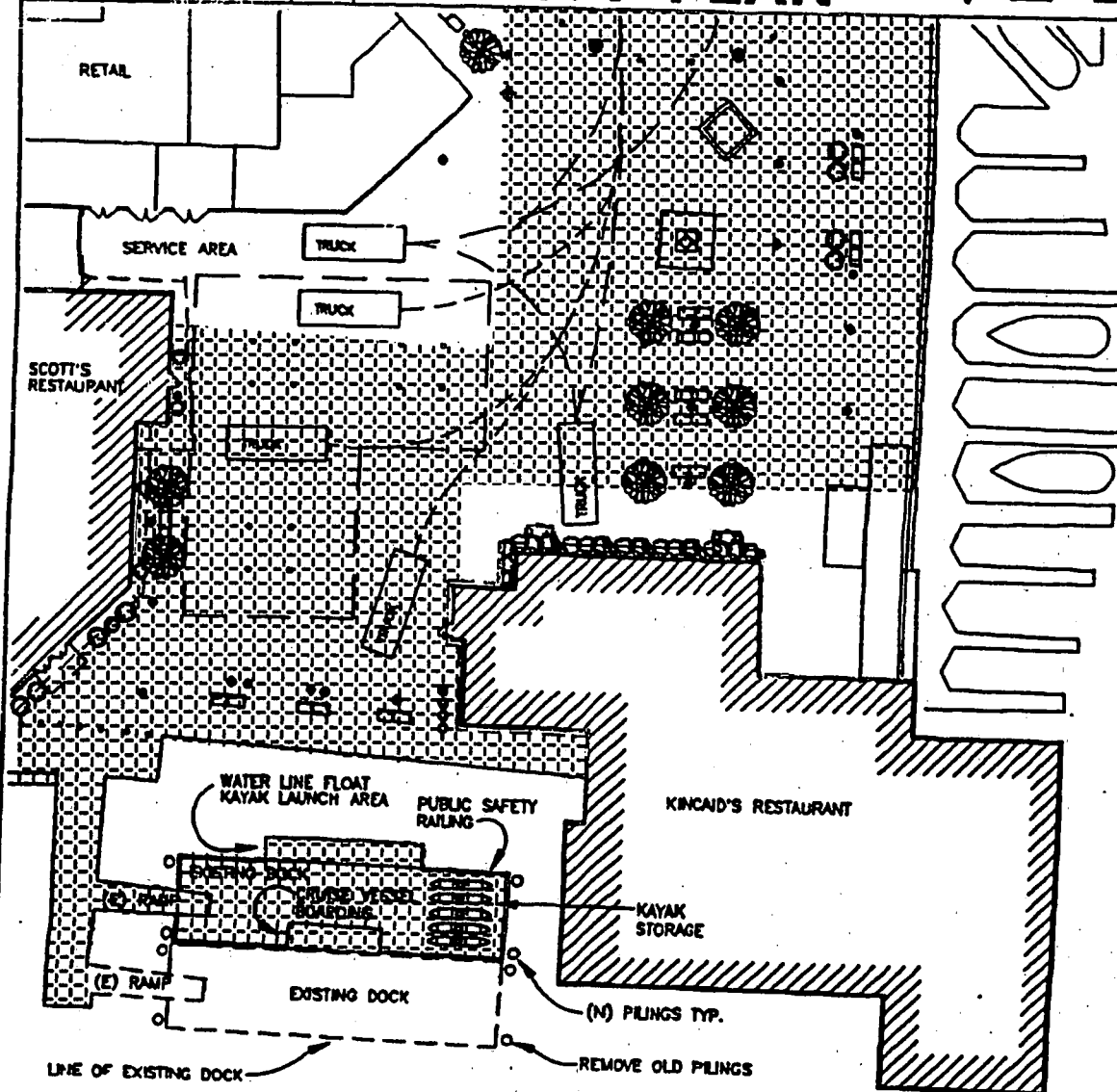
# LEGEND

- 1 RETAIL
- 2 PORT OF OAKLAND
- 3 THE MEADOW
- 4 CHERIE'S RESTAURANT
- 5 OFFICES
- 6 OVERLAND HOUSE GRILL
- 7 MAC'S
- 8 WATER ST. TWO
- 9 WATER ST. THREE
- 10 WATERFRONT PLAZA HOTEL
- 11 HOTEL RETAIL
- 12 JACK'S RESTAURANT
- 13 THE PAVILION
- 14 BARNES & NOBLE
- 15 WATER ST. ONE
- 16 SCOTT'S RESTAURANT
- 17 KINCAID'S RESTAURANT
- 18 KDMA RADIO
- 19 PIER ONE IMPORT
- 20 EL TORITO RESTAURANT
- P OLD SPAGHETTI FACTORY PARKING



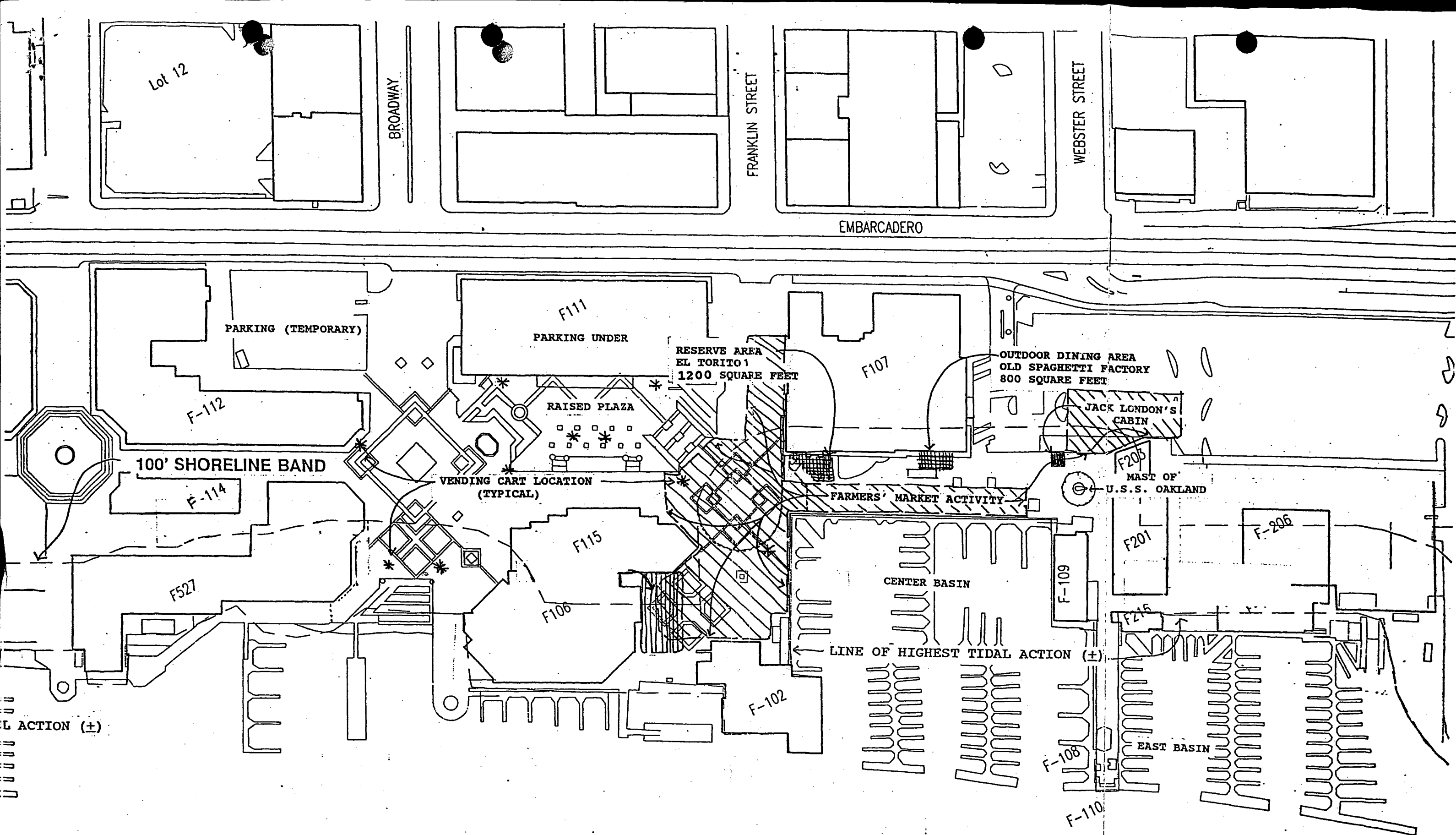
## 1 VICINITY PLAN

SCALE: 0 200' 400'



**DEDICATED  
PUBLIC ACCESS**

**EXHIBIT G**



SCALE: 0 50 100  
25 75

EXHIBIT BB  
PROJECT SITE PLAN  
PROPOSED AREA UTILIZATIONS

**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

THIRTY VAN NESS AVENUE, SUITE 2011  
SAN FRANCISCO, CALIFORNIA 94102-6080  
PHONE: (415) 557-3686

PORT OF OAKLAND  
ENVIRONMENTAL DEPT.  
05 SEP 13 10:08

**BCDC Original**

RECEIVED  
RECEIVED

PERMIT NO. 19-85  
(Issued on March 13, 1986, As  
Amended Through September 14, 1995)  
AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)

**RECEIVED**

SEP 29 1995

Port of Oakland  
P.O. Box 2064  
Oakland, California 94604-2064

ATTENTION: Fredrick R. Ferrin

SAN FRANCISCO BAY CONSERVATION  
& DEVELOPMENT COMMISSION

Ladies and Gentlemen:

On March 6, 1986, the San Francisco Bay Conservation and Development Commission, by a vote of 16 affirmative, 1 negative, and 1 abstention, approved the resolution pursuant to which the original permit was issued. Moreover, on June 10, 1991, November 5, 1991, June 25, 1992, and June 23, 1994, the Executive Director, pursuant to Regulation Section 10822, approved Amendment No. Five, Four, Six, and Seven, respectively. On August 17, 1995, the San Francisco Bay Conservation and Development Commission, by a vote of 15 affirmative, 0 negative and 0 abstentions, approved the resolution pursuant to which this amended permit is hereby issued:

**I. Authorization**

A. Subject to the conditions stated below, the permittee is granted permission to do the following on a 19.6-acre site, 16.1 acres of land and 3.5 acres of water, along the Oakland Estuary, between Clay Street and the Franklin D. Roosevelt Pier on the west and Webster Street on the east, in the City of Oakland, Alameda County:

**1. In the Bay**

- a. Remove 9,300 square feet of fill used for public access walkways, boat berths, and guest berthing;
- b. Construct and use a 54-berth addition to the existing marina requiring 8,500 square feet of floating Bay fill;
- c. Place and use 300 square feet of fill for a restaurant within the Boatel expansion;
- d. Construct and use 6,700 square feet of pile-supported wooden public access walkways bayward of the Boatel and the new Boatel expansion;
- e. Place and use 6,263 square feet of new fill for public access at the foot of Broadway for tidal stairs, an observation platform, and wooden walkways;

- f. Construct and use 20 new public guest berths, and a combination floating observation platform and pier for mooring large visiting vessels, both covering 5,500 square feet of Bay surface area;
  - g. Install a 10-foot by 126-foot pier, including 24 concrete pilings, for access to the ferry;
  - h. Install 6 public access benches and a glass windscreen on the westerly side of the ferry pier, and permanently dedicate the pier for public access;
  - i. Install a blue canvas awning with a 20-inch rise over the ferry pier;
  - j. Install a 54-foot-long, 6-foot-wide gangway to a 30-foot by 80-foot steel float, with 4, 20-inch steel piles;
  - k. Install a wooden platform and ramp for handicap access on the steel float;
  - l. Remove approximately 3,800 square feet of boat docks, including 7 pilings and install 2, 16-inch timber piles to anchor the remaining pier;
  - m. Relocate an existing dock to alongside Dock D, at the foot of 7th Avenue; and
  - n. Replace an existing dock, located between Franklin and Webster Streets, with a dock located at the foot of Clay Street;
  - o. Relocate and use an existing 1,600-square-foot barge approximately 20 feet closer to the shoreline as a small boat launching float, affixed to four, approximately four-square-foot steel piles; (Amendment No. Eight); and
  - p. Install and use a 175-square-foot, small boat launching head-float on the shoreline side of the relocated barge (Amendment No. Eight).
2. **Within the 100-foot shoreline band, construct and use the following:**
- a. A 20,300-square-foot portion of a 42,500-square-foot hotel;
  - b. A 8,400-square-foot portion of a 14,250-square-foot expansion of the Boatel;
  - c. A 700-square-foot portion of two small retail structures, covering a total of 18,400 square feet of area;
  - d. A 3,700-square-foot portion of a 5,600-square-foot expansion to Scott's Seafood Grill and Bar;
  - e. A 64,500-square-foot area, paved and landscaped for public access purposes; and
  - f. Make modifications to structures which do not change the footprint of the buildings nor detrimentally affect the quality or area provided for public access.
  - g. Plant an approximately 6,000-square-foot area north-west of the Boatel with grass to minimize erosion and dust until the hotel is built;
  - h. improve approximately 900 square feet of an existing public plaza area for outdoor dining, bayward of the Old Spaghetti Factory Restaurant;

- i. use dedicated public access areas for regularly scheduled, publicly-oriented events including but not limited to a farmer's market, parades, festivals, fairs, and a limited number of events charging paid admission, not including restaurant-sponsored private banquets, as limited by Special Condition II-B-2-a;
- j. Use up to 500 square feet of dedicated public access area for small retail kiosks or carts for vending food or merchandise, as shown in Exhibit BB and as limited by Special Condition II-B-2-b; and
- k. Construct a 472-square-foot ground level building addition, a 230-square-foot entry canopy and landscaping at Kincaid's Restaurant.
- l. Use a dedicated public access plaza for the periodic, temporary installation and use of a 4,500-square-foot banquet tent as part of Scott's Restaurant through January 15, 1996, pursuant to Special Condition II-B-2 (Amendment No. Eight);
- m. Construct, use and maintain a 4,400-square-foot, 19 to 40-foot-tall pavilion for shared public and private use, pursuant to Special Condition II-B-2 (Amendment No. Eight);
- n. Install cafe seating, benches, lighting, two sets of binoculars and other site furnishings within an existing 20,000-square-foot plaza (Amendment No. Eight); and
- o. Install and maintain three permanent and two temporary public access directional signs as part of the pavilion project. (Amendment No. Eight)

B. This amended authority is generally pursuant to and limited by your application of December 18, 1985, your letter dated December 16, 1987, requesting Amendment No. One which was reclassified as Amendment No. Five to BCDC Permit No. M84-94, your letter dated July 20, 1989 requesting Amendment No. Two, which was subsequently abandoned; your letter dated April 4, 1990 requesting Amendment No. Three which was incorporated into Amendment No. Seven; and your letters dated March 22, 1991, March 26, 1991, April 16, 1992, and your application dated April 20, 1993, requesting Amendment Nos. Four, Five, Six and Seven, and your application dated March 30, 1995 for Material Amendment No. Eight, respectively, including all accompanying and subsequent amendments, exhibits, and correspondence thereto, but subject to the modifications required by the conditions herein. The applications for Amendment Nos. One and Two were withdrawn.

C. The work authorized herein must commence no later than July 1, 1987, or this amended permit will lapse and become null and void. The work authorized herein must also be diligently prosecuted to completion and must be completed by July 1, 1995 ~~1998~~ (for hotel in I-A-2-a only) (Amendment No. Eight). The work authorized by Amendment No. Four must be diligently prosecuted to completion and must be completed by November 1, 1995. The work authorized by Amendment No. Five must be diligently prosecuted to completion and must be completed by June 1, 1993. The work authorized by Amendment No. Six must be diligently prosecuted to completion and must be completed by June 1, 1994. The work authorized by Amendment No. Seven must be diligently pursued to completion and must be completed by December 1, 1994. Authorizations I-A-2-h, i, and j and shall lapse seven years from the issuance of Amendment No. Seven. The work

authorized by Material Amendment No. Eight must commence by January 15, 1996 and must be diligently pursued to completion and must be completed by March 31, 1997. Reasonable extensions of time may be granted by further amendment of the permit where application is made prior to the completion date.

D. This project will result in a total of 31,247 square feet of fill. Of this fill, 8,500 square feet will be placed for marina berthing, 2,724 square feet for a ferry barge and gangway, 5,500 square feet for public guest berthing, and a pier for visiting vessels, and 14,523 square feet will be placed to improve public access and the appearance of the shoreline. The latter fill will consist of 6,700 square feet of pile-supported boardwalks, 300 square feet of solid fill for Boatel Expansion, 6,263 square feet of concrete fill for tidal stairs, observation platform, and wooden walkways and 1,260 square feet of pile-supported fill for a ferry pier. A total of approximately 102,168 square feet (2.30 acres) of improved public access plazas, walkways, and lookouts will be provided in the shoreline band and on fill in the Bay. Amendment No. Eight modifies the use of 4,400 square feet of this public access by allowing periodic, exclusive, private use of a 4,400-square-foot public access pavilion constructed pursuant to this amendment.

## II. Special Conditions

The amended authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

### A. Specific Plans and Plan Review

1. **Final Plan Review.** No work whatsoever shall be commenced pursuant to this amended permit until final precise site, engineering, grading, riprapping, architectural, landscaping, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The pavilion authorized in Material Amendment No. Eight shall generally conform to plans entitled "Public Pavilion," prepared by Arcus Architecture and Planning, dated June 19, 1995, as modified through July 3, 1995. The specific drawings and information required will be determined by the staff.
  - a. **Site, Architectural, and Landscaping Plans.** Site, architectural, and landscaping plans shall include and clearly label the 6.2-foot contour line above Mean Sea Level (the line of highest tidal action), the line 100 feet inland of the line of highest tidal action, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities, and other proposed improvements.
  - b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria for all portions of the project to be built on fill. Final plans shall be signed by the professionals of record and be accompanied by evidence that the design complies with all applicable codes.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- e- a. Completeness and accuracy of the plans in showing the features required above, particularly the line of highest tidal action, property lines, and the line 100 feet inland of the line of highest tidal action, and any other criteria required by this amended permit;
- d- b. Consistency of the plans with the terms and conditions of this amended permit;
- e- c. The provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this amended permit;
- f- d. Consistency with legal instruments reserving public access and open space areas;
- g- e. Assuring that any fill in the Bay does not exceed this amended permit; and
- h- f. Consistency of the plans with the recommendations of the Design Review Board.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the amended permit has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this amended permit or legal instruments approved pursuant to this amended permit, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this amended permit and any legal instruments submitted pursuant to this amended permit.
4. **Conformity with Plans.** Work authorized by A.1.1. in this amended permit shall conform to plans dated October 17, 1991 entitled "Seabreeze Marina" and "Central Basin", prepared by N. Doolittle and incorporated by this reference herein. The glass windscreen authorized by A.1.h. in this amended permit shall conform to plans dated August 20, 1991, entitled "Canopy Sections and Details" and incorporated by this

reference herein. The location and size of the ferry docks shall conform to site plan dated August 15, 1991, entitled "Proposed Development," attached as Exhibit B and incorporated by this reference herein. The ferry dock canopy authorized by A.1.i. in this amended permit shall conform to plans entitled "Jack London Square Ferry, Canopy-Elevation and Section" prepared by the Port of Oakland, dated April 15, 1992 and attached as Exhibit C. The outdoor dining area at the Old Spaghetti Factory Restaurant authorized by I-A-2-n shall conform to plans entitled "Outdoor Dining Area, Plan and Details" reissued on May 19, 1993, prepared by Mel Kroker, architect. No material changes shall be made thereafter to these plans without first obtaining written approval of the change(s) by or on behalf of the Commission.

5. **As-Built Plans.** The permittee shall submit as-built plans of the existing public access improvements in the plaza adjacent to the El Torito and Old Spaghetti Factory restaurants which describe, in detail, existing public access improvements.

#### B. Public Access

1. **Area.** The approximately 2.33-acre (102,168-square-foot) area along the entire approximately 1,875-lineal-foot shoreline of the site including 82,445 square feet of the shoreline band and 18,960 square feet of fill in the Bay as generally shown on Exhibits "A" "B," and "D," "F," and "G" shall be made available to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes as more specifically described in paragraphs II-B-2. If the permittee wishes to use the public access area for other than those purposes expressly delineated in paragraph II-B-2, the permittee must obtain prior written approval by or on behalf of the Commission.
2. **Permissible Uses.** The area required for public access shall be used and maintained for public purposes as outlined in Special Conditions II-B-1 and II-B-7 with only the following exceptions:
  - a. The permittee may use the public access areas for regularly scheduled, publicly-oriented events, including but not limited to concerts, parades, fairs, festivals, a weekly farmers market, and a limited number of events charging paid admission, but not including restaurant sponsored private banquets. Each event must receive prior written approval by or on behalf of the Commission and should be generally open to the public, should maintain a continuous band of public access to and along the shoreline at all times, should not discourage any persons or groups from attending approved events, should take advantage of the unique Bay setting, and should not unduly impede public access to and along the shoreline. Any additional maintenance, clean up or other maintenance or improvements required as a result of approved events shall be performed immediately. Excessive soiling of the public access areas or inadequate maintenance of public access facilities, or failure to maintain continuous public access to and along the shoreline are grounds for discontinuing the activities authorized pursuant to sections I-A-2-h through j.

On or before December 15th of each year, the permittee shall submit the following for review and approval by or on behalf of the Commission:

- (1) a list and proposed schedule of all proposed events for the next year;
  - (2) a site plan showing the location of each proposed event;
  - (3) at least 30 days prior to annual events listed in the schedule provided pursuant to this Special Condition, the permittee shall provide a brief written description of the proposed use of the public access areas, e.g. any erection of booths, tables or other temporary elements, the approximate amount of the public access area to be utilized, and the duration of each event, and a site plan showing the location of the event and all temporary structures. These plans shall be reviewed within 15 days of submittal pursuant to Special Condition II-A.
- b. The permittee may locate and use, within the required public access areas, retail kiosks that shall total no more than 500 square feet as shown in Exhibit BB. Approval of individual kiosks shall be pursuant to Special Condition II-A, Specific Plan Review and consistent with descriptive materials provided in the application for Amendment No. Seven;
  - c. In addition to the events authorized pursuant to Special Condition II-B-2-a, the permittee may obtain authorization for a limited number of "last-minute" events. Request for authorization shall be submitted at least 10 days prior to the event. For each "last-minute" event, the permittee shall submit a plan depicting the location of the event pursuant to Special Condition II-B-2-a, prior to the staging of the event. The staff shall review the permittee's request for "last-minute" events within 3 days of submittal and may refuse authorizations for excessive last-minute event requests.
  - d. The uses of public access areas authorized by Special Condition II-B-2 shall terminate at the end of seven years from the date of Amendment No. Seven. The Commission will consider extensions of the non-public uses permitted by subsections II-B-2-a through II-B-2-c and may renew these uses only if the permittee can demonstrate to the satisfaction of the Executive Director that the permittee has complied with Special Condition II-B and all non-public use or uses authorized for the seven-year period have not adversely affected the public's use of the public access areas.

**3. Temporary Banquet Tent Use, Pavillion Use and Public Access Barge and Launching Float Use.**

- a. Temporary Banquet Tent Use. Scott's Restaurant shall be allowed to use an approximately 4,500-square-foot portion of the approximately 23,000-square-foot dedicated public access plaza located between Scott's and Kincaid's Restaurants in Jack London Square between August 31, 1995 and January 15, 1996 for erecting a tent to house private banquets and other private events only as specified herein. Scott's Restaurant shall submit to and obtain approval by

the Port of Oakland of a schedule of private banquets and other private events to be held. The approved event schedule shall be consistent with the parameters for scheduling specified in Exhibit E to this amended permit. The tent shall be erected no sooner than 6 hours prior to an approved scheduled event and shall remain standing no longer than 12 hours following an approved scheduled event.

- b. **Public Pavilion Use.** Scott's Restaurant shall be allowed to use the approximately 4,400-square-foot public pavilion located in the 23,000-square-foot, dedicated public access plaza lying between Scott's and Kincaid's Restaurants in Jack London Square for private events only as specified herein. Scott's Restaurant shall submit to and obtain approval by the Port of Oakland of a schedule of private events. Operation of the fabric panels enclosing the private events beneath the pavilion shall be consistent with the guidelines specified in Exhibit E to this amended permit. The public plaza site furnishings shall be restored immediately following each approved event, or if an approved event terminates after 10:00 PM, the site furniture shall be replaced by 9:00 AM of the following day. California Canoe and Kayak shall be allowed to occasionally use a small portion of the dedicated public access plaza for kayak rentals and classes. The racks for kayak display shall be maintained at the north end of the plaza consistent with the conceptual arrangement shown in Exhibit F to this amended permit.
- c. **Event Schedule Reporting.** Scott's Restaurant shall provide the Port of Oakland with its first quarterly schedule for private events to be held in the pavilion at least 60 days prior to the first event. The events schedule shall not be approved by the Port of Oakland, unless it is consistent with the parameters for scheduling specified in Exhibit E to this amended permit. Subsequently, Scott's Restaurant's quarterly schedules shall be submitted to the Port of Oakland by January 1, April 1, July 1 and October 1 of each year. By March 1 of 1996 and March 1 of every year thereafter the Port of Oakland shall provide the Commission with a summary of the events scheduled for the previous year. The tent-covered event schedule shall be submitted to the Port of Oakland within 10 days of the issuance of Amendment No. Eight to the BCDC Permit and shall be updated every three months until January 15, 1996.
- d. **Public Access Barge and Launching Float Use.** The 1,600-square-foot, relocated barge and 175-square-foot launching float shall be used primarily for public launching of small boats, swimming access and other public access uses. The permittee is also authorized to use these facilities for occasional kayak launching and boat removal and for transient tour boat and dining yacht tie-up. The commercial use of this public access facility shall not unduly limit the public's use and enjoyment of the small boat launching facilities.
- e. **Violation.** The holding of a banquet or other private event within the pavilion or public access plaza not listed in the schedule of events, or the approval of a schedule of events that is inconsistent with the guidelines set forth in Exhibit E to this amended permit shall be considered an activity undertaken without Commission authorization and subject to the schedule of standardized civil

penalties described in Commission Regulation Sections 11302(2) and  
11386(a)(3).

3. 4. **Permanent Guarantee.** Prior to the commencement of construction of each phase of the project, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the public access areas within that phase to the extent the permittee is legally able to do so. The instrument(s) shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this amended permit and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of Alameda County and shall include a legal description of the property being restricted and a map that clearly shows the line of highest tidal action, the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:
  - a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this amended permit;
  - b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
  - c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, lessees, licensees and users.
4. 5. **Recordation of the Instrument.** Within 60 days after approval of the instrument, the permittee shall record the instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
5. 6. **Improvements Within the Public Access Area.** In accordance with the phased completion schedule described in Special Condition II-B-5, below, the permittee shall install the following improvements:
  - a. A 22,000-square-foot shoreline promenade and access area adjacent to the new hotel with a minimum width of 25 feet, including a public picnic area of approximately 4,500 square feet;
  - b. A 8,400-square-foot access area adjacent to the Boatel extending to the foot of Broadway including walkways a minimum of 13 feet wide, with larger seating areas up to 32 feet wide;
  - c. A 18,000-square-foot paved plaza on the shoreline at the foot of Broadway;

- d. Five thousand five hundred (5,500) square feet of access on fill between the foot of Broadway and along Scott's including tidal stairs at the foot of Broadway, a 20-foot extension of the 10-foot-wide pile-supported walkway along Scott's, and a 30-foot by 115-foot fixed viewing platform near Scott's;
- e. Five thousand five hundred (5,500) square feet of floating fill for access including 20 guest boat berths and 18-foot by 90-foot dock for large, visiting vessels;
- f. A 22,800-square-foot portion of a 32,300-square-foot public pedestrian plaza between Scott's and the Grotto and around the Grotto to the existing pedestrian mall on Water Street; and
- g. A 1,260-square-foot ferry pier, with 6 public access benches, west of the FDR Pier; and
- h. A, 18,189-square-foot, existing improved plaza, bayward of the El Torito and Old Spaghetti Factory Restaurants, with 7 benches, 283 square feet of landscaping, Jack London's cabin, the most of the USS Oakland, concrete paving, 4 trash containers, 3 public shore signs, and lighting;
- i. A 4,400-square-foot, L-shaped pavilion (see Exhibits F) with a translucent fiberglass roof material consistent with awnings in Jack London Square, three sets of four steel columns supporting a tubular steel truss roof-frame with light fixtures attached providing fifteen vertical-feet clear from the existing plaza, a revised paving pattern using pavers which match existing pavers and reflect the shape of the pavilion, tivoli lighting, grade-level up-lighting, fabric panels with transparent window panels located at the perimeter of the pavilion roof, and colorful flags and banners which do not include the names of any business or product. Signs on the pavilion towers shall be neon and shall read "Public Pavilion" only;
- j. At least 15 tables and 35 chairs which are designed to match the existing cafe seating at the Barnes and Noble bookstore, to be in placed at all times, except when the pavilion is needed for approved private events or other approved public events;
- k. Two sets of permanent, pedestal style binoculars for public use free of charge;
- l. At least four additional public access signs, two permanent and two temporary to facilitate shoreline public access between Franklin Street and Broadway on the Bay side of Scott's Restaurant. The temporary signs shall be installed and removed when approved private events are held. One public access sign shall be installed at the entrance to the gangway leading to the kayak launch float that describes the rules and hours for public use of the kayak launch float; and
- m. A 1,775-square-foot kayak launch, including a 1,600-square-foot floating barge and a 175-square-foot head float for use in kayak and other small boat launching, tour and dining yacht tie-up, swimming and other public access purposes;

Such improvements shall be consistent with the plans approved pursuant to Special Condition II-A of this amended permit and shall substantially conform to the plans entitled "Jack London Square Phase I Area; Master Plan," prepared by Amphion Environmental, and as shown on the attached Exhibits A, B, and D.

6. 7. **Phasing of the Construction of the Public Access Improvements.** The public access improvements may be completed in segments in conjunction with the phased development of the project. The public access improvements shall be completed with each phase of the adjacent development and shall be completed prior to the use of the facilities constructed during that phase of the development.
7. 8. **Maintenance.** All areas and improvements required by Special Condition II-B-4, including hardscape, landscaping, signs, and public paths shall be permanently maintained by, and at the expense of, the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, repairs to all path and hardscape surfaces, replacement of any plant material that dies or becomes unkempt, repairs or replacement as needed of benches, trash containers, signage and irrigation devices, restoration of any shoreline or other area that becomes eroded or damaged by wave action, storm, or other deterioration, and assuring that public access signs remain in place and visible. Within 90 days after notification by staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff.
8. 9. **Reasonable Rules on Use of Public Access Areas.** The permittee may impose reasonable rules on the use of the areas required to be provided for public access provided such rules are first approved by or on behalf of the Commission and do not significantly affect the public nature of the area nor unreasonably burden public use.
9. 10. **Event Clean-Up Plan.** The permittee shall submit a plan for the clean-up of the public access areas used during public events. The plan should be based on the plan submitted in the permittee's application for Amendment No. Seven and shall be approved by or on behalf of the Commission.
10. 11. **Vehicular Use of Public Access Areas**
  - a. **Parking.** No parking whatsoever shall be permitted within the public access areas required under this amended permit, except as specifically authorized herein.
  - b. **Vehicular Use.** Vehicular use of the public access areas authorized herein shall be restricted to service, delivery vehicles, and drop off purposes. Service and delivery access shall be limited to the hours prior to 11 a.m. Access for the infirm and handicapped shall be permitted but shall be managed according to a vehicular access plan as required below.

- c. **Vehicular Access Plan.** Prior to June 1, 1986, the permittee shall prepare and submit for review and approval by or on behalf of the Commission pursuant to Special Condition II-A, a vehicular access plan which will describe which areas may be used for vehicular access, under what conditions, and specifically describing how the vehicular access plan will be enforced.

**C. Marina Conditions**

1. **Construction.** Construction standards for marina berths and associated facilities shall be at least equal to those established by the California Department of Boating and Waterways. All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.
2. **Waste Discharge.** The discharge of any solid or liquid wastes, including oily bilge water, waste oil, or sewage into the Bay within the marina basin shall be in accordance with federal and state regulations.
3. **Waste Facilities.** Prior to the use of any berth, the permittee shall assure there is available and convenient, suitable facilities for receiving and disposing of oily bilge water and waste oil, at least one facility for pumping out vessel holding tanks and receiving wastes from portable toilets in locations easily accessible by boats, and onshore toilet facilities for the marina tenants. Such facilities shall be constructed to all applicable codes and standards, shall be connected to onshore waste treatment facilities, and shall be maintained by the permittee in a safe and sanitary manner. Such facilities shall be available to boaters every day of the week and any fees for the use of the facilities shall be limited in amount to cover the cost of the installation, operation, and maintenance of the facilities.
4. **Enforcement Responsibility.** The permittee shall adequately enforce the requirements herein, and shall submit to the Commission the name, address, and telephone number of the person at the marina responsible for such enforcement.
5. **Houseboats and Live-Aboards.** No houseboat, floating structure, or vessel used for residential purposes shall be moored at the marina.
6. **Sales or Long-Term Rental of Berths.** No right to use an individual berth shall be granted or otherwise transferred that exceeds one year in duration.

**D. Covenant Not to Sue or Seek Indemnification for Damages**

1. By execution of this amended permit, the permittee releases from any present or future liability whatsoever and covenants on behalf of itself and its successors not to sue or otherwise seek legal redress against the San Francisco Bay Conservation and Development Commission and/or the permittee's and any other port authority's shipping and terminal tenants for damages to the marina facilities or for any other relief based either directly or indirectly on wave action or other actions which affect the marina facilities and that arise out of the use of the Oakland Estuary for navigation

or waterborne commerce, whether or not said action or actions constitute passive or active negligence, provided that this release and covenant shall not prohibit permittee from seeking such damages or other relief (a) from or against any person or entity whose intentional and wrongful act is the proximate cause of damages or losses to permittee, or (b) for any trespass on or wrongful physical invasion of the marina by tangible objects such as vessels, but excluding any trespass or invasion by means of noise, light, vibrations, smoke, air currents, water waves or turbulence, or electronic or other emissions resulting from the operation of vessels or marine terminals in the Oakland Estuary, so long as said operations comply with all laws, rules, and regulations that apply to the use of the Oakland Estuary for navigation or waterborne commerce. The legal actions covered by this release and covenant shall include, but not be limited to, damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with the use or enjoyment of property, nuisance, or inverse condemnation, for injunctive or other extraordinary or equitable relief from normal navigation, waterborne commercial, or port-related operations within the Oakland Estuary.

2. In any deed, lease, license agreement, or other instrument that conveys either an interest in or right to use a marina berth or berths, the permittee or its assignees or leasees shall include in the deed, lease, license agreement, or other transfer instrument a term or condition by which the purchaser, lessee, licensee, or transferee (herein after collectively referred to as "transferee") releases from any present or future liability whatsoever and covenants on behalf of himself and his successors not to sue the Commission and/or the permittee's and any other port authority's shipping and terminal tenants for damages to the transferee's property used in connection with or located at the marina, or any other relief based directly or indirectly on wave action or other actions which affect the transferee's said property or the transferee's use or enjoyment of the marina, or which result in any bodily or personal injury to the transferee as a result of the transferee's use of the marina (including access by way of the Oakland Estuary to or from the marina), and that arise out of the use of the Oakland Estuary for navigation or waterborne commerce, whether or not such action or actions constitute passive or active negligence, provided that this release and covenant shall not prohibit the transferee from seeking such damages or other relief (a) from or against any person or entity whose intentional and wrongful act is the proximate cause of damages, injuries, or losses to transferee, or (b) for any trespass on or wrongful physical invasion of the marina by tangible objects such as vessels, but excluding any trespass or invasion by means of noise, light, vibrations, smoke, air currents, water waves or turbulence, or electronic or other emissions resulting from the operation of vessels or marine terminals in the Oakland Estuary, so long as said operations comply with all laws, rules, and regulations that apply to the use of the Oakland Estuary for navigation or waterborne commerce. The release and covenant shall cover the same legal actions that the release and covenant required by Special Condition II-D-1 covers.
3. The permittee agrees to and shall defend, hold harmless, and indemnify the Commission, and/or the permittee's and any other port authority's shipping and terminal tenants from any and all liability, including without limitation, civil penalties,

finances, business losses, and additional expenses, that arise out of any act, event or occurrence which would come within permittee's or any transferee's release and covenant not to sue under Special Condition II-D-1 and Special Condition II-D-2. For purposes of Special Condition II-D-3, any person using the marina shall be deemed to be a transferee, and any property at or being used in connection with the marina shall be deemed to be the property of a transferee. The hold harmless and indemnification shall cover the same actions that the release and covenant required by Special Condition II-D-1 covers.

4. In any deed, lease, license agreement, or other transfer instrument covered under Special Condition II-D-2, the permittee shall include in the deed, lease, license agreement, or other transfer instrument a term or condition by which the transferee agrees to defend, hold harmless, and indemnify shipping and terminal tenants and shipping users from any and all liability, including without limitation, civil penalties, fines, business losses, and additional expenses that arise out of any act, event or occurrence which would come within any transferee's release and covenant not to sue under Special Condition II-D-2 and which involves the transferee. For purposes of Special Condition II-D-4, any person using the marina shall be deemed to be a transferee, and any property at or being used in connection with the marina shall be deemed to be the property of a transferee. This hold harmless and indemnification shall cover the same legal actions that the release and covenant required by Special Condition II-D-1 covers.
5. **Liability Insurance.** The permittee shall maintain in force at all times public liability and property damage insurance, including personal injury, broad form property damage, blanket contractual, completed operations and products, with such limits as may be reasonably requested by the Commission from time to time, but in no event for less than the sum of TEN MILLION DOLLARS (\$10,000,000.00) combined single limit; and the permittee agrees that the Commission, and/or the permittee's and any other port authority's shipping and terminal tenants shall be named as additional insureds under such liability insurance policy or policies.

All such policies shall be endorsed with a severability of interest or cross-liability endorsement, reading generally as follows: "Cross-Liability -- In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability."

A certificate or certificates, in a form provided by the Commission or reasonably satisfactory to the Commission, evidencing such insurance coverage shall be filed with the Commission prior to the commencement of any work under this amended permit, and said certificate(s) shall provide that such insurance coverage will not be canceled or reduced without at least 30 days prior written notice to the Commission. At the Commission's request from time to time, the permittee shall promptly provide to the Commission complete copies of liability insurance policies maintained pursuant to this amended permit. At least 15 days prior to the expiration of any such policy, a

certificate showing that such insurance coverage has been renewed or extended shall be filed with the Commission. If such coverage is canceled or reduced, the permittee shall, within 15 days after receipt of written notice from the Commission of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, file with the Commission a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

**E. Debris Removal.** All construction debris shall be removed to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

**F. Notice to Berth Renters.** The permittee shall provide a copy of this amended permit to every berth renter calling his or her attention to Special Conditions II-C and II-D of this amended permit.

**G. Assignment.** The permittee may make a full or partial assignment to the rights and/or duties under this amended permit provided that the assignee is acceptable to the Commission. The assignment shall be made in writing and clearly indicate which portions are assigned and which portions remain unassigned. Any assignee shall sign a written statement to the effect that he or she has read and understands the conditions of this amended permit and agrees to be bound by all terms and conditions hereof.

**H. Permit Recording.** The permittee shall record this amended permit or a notice referring to this amended permit with the County of Alameda within 60 days after execution of this amended permit and shall provide evidence of recording to the Commission.

### **III. Findings and Declarations**

#### **A. Use**

1. **Bay Plan.** San Francisco Bay Plan Map No. 4 does not designate the project site for any priority uses but a note on the map states: "JACK LONDON SQUARE. Expand commercial recreation facilities as needed. Provide continuous public access along Estuary to Lake Merritt Channel." The proposed use of the site as commercial recreation development which provides continuous shoreline access is consistent with the Bay Plan.
2. **Seaport Plan.** Areas to the east, the west, and across the Estuary are designated for marine terminal use in the Seaport Plan. The use of the Jack London Square area for a small craft recreational marina could be inconsistent with the Seaport Plan if it interferes with the existing use of the estuary for port purposes. The construction of a small boat marina expansion in the vicinity of a port operation raises liability issues for shippers. The wakes of passing ships and wash from turning ships can cause waves and surge in the marina that could result in wear and chaffing or swamping of

small boats in the marina. If shippers find that using the area would expose them to liability they may select other ports of call or additional fill in the Bay may be requested in areas where the conflict between shipping and recreational boating does not exist. In order to assure that the project does not result in additional fill and does not impair the efficient utilization of the adjacent port area, the Commission finds that Special Condition II-C must be imposed.

B. FIII. The permittee will place a total of 31,247 square feet of Bay fill, including fill for berths, public access, and to improve shoreline appearance.

1. **Fill for Marina.** The fill for the marina berths is for a water-oriented use and can be authorized so long as the fill is the minimum necessary. The expansion of the marina is modest and the berths are sized to fall within Department of Boating and Waterways guidelines for such facilities. Therefore, the Commission finds that the fill for the marina berths is the minimum necessary for the proposed use.
2. **Fill for Public Access.** The Commission's policies allow minor amounts of fill for providing new public access if there is inadequate public access in the area. The site includes three existing buildings located directly on the edge of the Bay (the Boatel, Scott's, and the Grotto). There are 7-foot-wide wooden walkways on fill bayward of the Boatel and Scott's. The proposed fill would replace these narrow walks with wider walkways, some seating and viewing areas, and observation decks. In addition, the permittee will provide public short-term boat docks for public access from the Bay to the shoreline. Placement of the new wooden walkways is the only way to provide continuous shoreline access around the Boatel and Scott's. Furthermore, the Design Review Board found the fill necessary to provide attractive useable public walkways bayward of these structures. The public boat docks will promote Bay-to-shore access and are the only public facilities of this type in the Jack London Square area. The fill for tidal stairs and observation platforms will provide design elements within the overall public access design, create opportunities for the public to get close to the water's surface, and enhance views from the public access areas to the surface waters of the narrow Estuary. The fill for the ferry docks, authorized in Amendment No. Four will provide access to public transportation, including handicap access, and will provide a place for the public to sit near the Bay. Therefore, the Commission finds the proposed fill is needed to provide public access and is the minimum amount necessary.
3. **Amendment No. Seven.** Several minor modifications to the fill quantities in the original permit are made by this amended permit to reflect minor modifications to the project's design and to correct errors and omissions from earlier amendments to the permit. In Section I-A-1-e, the authorized fill increases from 5,500 to 6,263 square feet to reflect the actual amount of solid and pile supported fill placed to improve public access and shoreline appearance at the foot of Broadway. The original 5,500-square-foot fill total was derived from imprecise conceptual design drawings.

Further, in Section I-D the total amount of fill is increased from 26,500 to 31,247 square feet to reflect: (1) the 763-square-foot increase in I-A-1-e; (2) the 2,724 square feet of fill for a ferry barge and gangway authorized in Amendment No. Four; and (3) the 1,260-square-foot public ferry pier authorized in Amendment No. Four.

4. Material Amendment No. Eight to this permit authorizes the relocation of an existing, 1,600-square-foot barge affixed to four, four-square-foot piles with a 175-square-foot launching float attached. The barge is being relocated to facilitate its use, in conjunction with the launching float, as primarily a small boat launching facility. The barge will also continue to be used periodically for tour and dining yacht berthing and for other transient boat tie-up as needed. The fill is water-oriented in nature and will serve primarily to facilitate the public's use and enjoyment of the Bay by providing a safe, convenient small-boat launch which also provides small boat access to the Bay for people with handicaps, consistent with the requirements of the Americans with Disabilities Act (ADA) and California Title 24.

4. 5. Fill for Improving Shoreline Appearance. The Commission's policies allow minor fill to improve shoreline appearance if the appearance of the shoreline adversely affects enjoyment of the shoreline. Adjacent to the Boatel is a small inlet which will be inland of the public access boardwalk. The permittee proposes to construct a 300-square-foot portion of a restaurant within the Boatel over this inlet. The public access walkway will be reconstructed and built as a link to the large public plaza at the foot of Broadway. The Design Review Board found the overall exterior of the facade of the Boatel expansion would be attractive. Therefore, the minor fill will improve the shoreline appearance, and be the minimum amount necessary. The awning authorized by Amendment No. Six will not adversely impact the appearance of the shoreline nor public access.

C. **Public Access.** The project will provide a total of 2.35 acres of public access along the entire 1,875-foot length of shoreline of the site, or approximately 42 percent of the shoreline band. The access will consist of a continuous shoreline walkway with larger plaza areas at the foot of Broadway and between Scott's Grill and the Grotto Restaurant and will include 2,830 square feet of public access already provided by Scott's in BCDC Permit No. M84-94. There will also be public access on the ferry pier.

The access provided is much less than the Commission has required in other urban, mixed use developments, even those with existing structures. For example, in 1980, the Commission authorized Alameda Marina Village directly across the Estuary. On the 206-acre site, the Commission required 286,000 square feet of shoreline band along the one-mile of shoreline, which is over 50 percent of the shoreline band. In addition, the Commission required 126,000 square feet of public access on fill.

The Design Review Board reviewed the project on three occasions and only one Board member found that the project would provide maximum feasible public access. However, when the area for public access on fill--boardwalks and piers--is added to the area provided in the shoreline band, a total of 102,430 square feet or 2.35 acres, the Commission finds that the minimum threshold for maximum feasible public access is met and provided by the overall project.

The design of the public access area is also of considerably less quality than other projects approved by the Commission. In this redevelopment project, the Port has the opportunity to create a major civic achievement on the level of other urban waterfront developments around the nation. The Design Review Board expressed its frustration that the Port is foregoing the opportunity to develop a public plaza where Broadway, Oakland's major city street, meets the Estuary. This site has considerable historic, cultural, and urban design significance. Yet the Port has chosen to largely ignore the public value of the area by allocating it to the expansion of the Boatel. As a result, one Design Board member concluded: "There's no square there," referring to the fact that Jack London Square (the plaza at the foot of Broadway around the bust of Jack London) will be little more than an extension of a vehicle turn-around area. The Board also noted that the focus of activities--the eating pavilion and retail shops--will be inland, and that no major civic spaces face directly onto the waterfront. The waterfront area is designed as a secondary space instead of as a focus for public assembly and a center of activity for members of the public who cannot or choose not to patronize the hotels, shops, and restaurants.

The Commission shares the conclusions of the Design Review Board that the design of the project is not the highest quality and that the project will not realize the full potential of this unique urban waterfront location. However, the Commission finds that the project will provide sufficient space for public access for the project to be approved.

#### **Public Access Use Modifications (Amendment No. Seven)**

Amendment No. Seven authorizes the permittee to: (1) use dedicated public access areas for regularly scheduled, publicly oriented events including fairs, festivals, concerts, a farmer's market and some events charging paid admission; (2) use up to 500 square feet of dedicated public access area for limited commercial activities, including small retail kiosks or carts for vending food or merchandise; and (3) improve approximately 900 square feet of an existing plaza for outdoor dining as part of the Old Spaghetti Factory Restaurant. The Port is dedicating 18,189 square feet of an existing public plaza for permanent public access to offset the public access impacts of the project.

The use of the dedicated public access areas for publicly-oriented events will enliven and increase the use of the underutilized public access in the Jack London Square area. The events proposed by the permittee do not charge admission, are of limited duration and would be consistent with the intended and anticipated uses of the public access spaces. The Bay Plan findings on recreation state in part, that, "a major supplement to parks, marinas, and other forms of water-oriented recreation are the several areas of water-oriented commercial recreation and public assembly that have been developed around the Bay, such as....Jack London Square in Oakland....Additional commercial recreation and public assembly are desirable uses of the shoreline if they permit large numbers of persons to have direct and enjoyable access to the Bay. These uses can often be provided by private development at little or no cost to the public support authorization of this project."

Special Condition II-B-2-a requires the permittee to submit a schedule of proposed events annually accompanied by a site plan describing each event's location for review and approval by, or on behalf of the Commission. This will enable the Commission staff to monitor the amount,

frequency, duration, size, and other aspects of events to ensure that the public's use of the dedicated public access areas is not compromised.

The limited commercial activities authorized by this amendment are small-scale carts and stands for vendors which will not singly nor collectively serve to constrain the public's use of the public access areas. The Bay Plan policies on recreation, in part, state that, "limited commercial recreation facilities...should be permitted within waterfront parks provided that they are clearly incidental to the park use, are in keeping with the basic character of the park and do not obstruct public access to and enjoyment of the Bay."

Special Conditions II-B-2-b and II-A require staff review and approval of individual kiosks for use, design and location. The review will ensure that all approved kiosks will compliment the public access areas and uses in the Jack London Square area and provide for the needs of the recreating public without impeding its use of the public access areas.

These limited, non-public uses of the public access areas may help to bring larger numbers of persons to the public access areas than otherwise might use them and, therefore, help publicize the areas public availability. The limited nature of the non-public use will not substantially interfere with the public nature of the area. Special Condition II-B-2-d provides that the uses of the public access areas authorized in Amendment No. Seven are authorized for the limited term of seven years to allow the Commission to reevaluate these uses and the related impacts, if any, on public access. This requirement provides an additional mechanism for ensuring the public access areas remain open and accessible to the public.

Amendment No. Three, which permitted the construction of a 472-square-foot restaurant addition, a 230-square-foot entry canopy and landscaping was incorporated into Amendment No. Seven since the Port failed to pursue the amendment request by submitting requested information in a timely manner, and the amendment request was not returned unfiled pursuant to Regulation Section 10351. The application lay dormant until its rediscovery arising from the request for Amendment No. Seven. The Port has already completed the work for which authorization was requested and modified the proposal project consistent with the comments of the staff and the Design Review Board. Therefore the Commission finds the work proposed in the application for Amendment No. Three will not have a detrimental affect on public access.

The project authorized in Amendment No. Eight modifies the design and use of the existing, dedicated public access plaza lying between Kincaid's and Scott's Restaurants in Jack London Square. This amendment authorizes the construction of a 4,400-square-foot pavilion in the plaza to be used for public access purposes eighty percent of each year (292 days) and for private events hosted by Scott's Restaurant twenty percent of each year (73 days). The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately 20 percent of each year. In addition, the covering of the public access space could reduce the public character of the plaza, thereby discouraging the public's use of the plaza.

The site for the public access pavilion is part of a large (32,300-square-foot), L-shaped, public space which receives relatively little public use, in part because its primary function is as a service vehicle access to the two restaurants and retail shops. The lack of activities fronting on the

PERMIT NO. 19-85  
(Issued on March 13, 1986, As  
Amended Through September 14, 1995)  
AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)  
Port of Oakland  
Page 20

plaza combined with the service vehicle activity significantly diminish the value of the plaza as a public space. The California Canoe and Kayak rental and sales business has significantly enlivened this plaza with its colorful kayaks and the activity generated by frequent classes and canoe and kayak rentals. However, the backs of buildings generate little life in plazas. Approximately 290 feet of the 330 feet of walls framing this plaza are the rear or service entry of the buildings, while only 40 feet are fronts.

The introduction of the pavilion could generate activities in the plaza which do not occur there now because of the existing building and use configuration. The private banquet events may bring people to Jack London Square who would not otherwise visit the shoreline and it may serve as a catalyst for future visits to the Square and will likely generate additional sales for other businesses in the Square. The pavilion will also be used by other, more public events which require cover or protection from inclement weather, including the Farmers' Market, art shows, product displays and boat show displays.

The existing barge on the southeast side of the plaza will be relocated closer to the shoreline to be shared by the existing kayak rental and sales business for launchings associated with classes it offers, by tour and dining yachts as a transient boat tie-up and for public access. Special Condition II-B-3 provides that the 1,600-square-foot barge and the 175-square-foot launching float be used for public access including small boat launching, tour and dining boat tie-up and swimming access to the Estuary. Relocating the float and programming its use as described should increase the activity in the plaza, while increasing the on-going commercial use of the plaza area. Increased human activity in the area is desirable since the plaza is relatively underutilized by the public. However, the relocated barge and head float will primarily provide more convenient access for customers of the California Canoe and Kayak shop for launching in the Oakland Estuary and will provide an additional berth for private dining and tour boats. Given the public access use and dedication requirements in this amended permit, the Commission finds that this limited commercial use on the floating fill is appropriate.

Amendment No. Eight authorizes the private use of the public pavilion for twenty percent of the time or up to seventy-three calendar days per year. Special Condition II-B-3 requires that this private use be scheduled consistent with the guidelines specified in Exhibit E to this amended permit. The scheduling guidelines define two types of use periods: (1) May through October will be the higher public use period; and (2) November through April will be the lower public use period. There are approximately one-hundred-and-six weekend days each year or approximately nine weekend days per month. During the higher public use period (May through October), the private events are limited to a maximum of three weekend days per month on-average, with six weekend days required for public use. There is a minimum requirement of three weekend days per month free of private events. This allows the permittee to exceed the three events per month limit, but requires that it meet the overall requirement by having fewer events in subsequent months during the higher use period. During the lower public use period (November through April), the permittee is allowed to schedule up to four private events per month on weekend days, on average, and will be required to reserve at least five weekend days on average for public use. The permittee is required to provide a minimum of three public-use weekend days per month, and must average the private use to conform with the four-day-per-month average allotment. The total event allotment for one year is seventy-three. The Commission finds that the private event use will not adversely

impact the public's use and enjoyment of the plaza, provided that the schedule of events approved by the Port adheres to the guidelines specified in Exhibit E to this amended permit.

The Commission's public access design guidelines state, in part, that: "public access should generally be open to the sky...be designed to be usable by the greatest number and diversity of people, including the physically handicapped." The project will provide a covered, open outdoor area for all users of the wharf. The towers will be visible above the adjacent buildings to attract passersby from a distance and signal users to explore the waterfront. The open-truss structural system allows for longer spans with less intermediate supports, thus preserving views of the Bay. The structure does not significantly impede existing shoreline access nor will it unduly interfere with the existing access to the wharf edge. The proposed pavilion will have a minimal impact on existing view corridors and sight lines of the Oakland Estuary. The feeling of openness achieved through the use of slender structural columns and the open truss system will minimize sight line obstructions. The project will modify the existing paving pattern to coordinate with the outline of the proposed structure. The Design Review Board noted that the existing paving pattern directs one's eye along the existing view corridor to the ships on the opposite shore. The revised paving pattern will preserve this feature to the greatest extent feasible.

The pavilion will be supported by columns similar in color and shape to pedestrian scale lighting in the square, will be outfitted with neon signs atop the towers naming the structure "Public Pavilion" and the paving pattern in the plaza will be modified to reflect the overhead pavilion while utilizing paving materials consistent with the existing paving. However, the covering of the public access space could reduce the public character of the plaza, thereby discouraging the public's use of the plaza. The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately twenty percent of each year. The proposed pavilion will be situated to provide an unobstructed, 34-foot-wide view corridor from Water Street to the estuary approximately 80 percent of the time when the facility is open for public use. The existing view corridor width through this plaza is approximately 57 feet wide. The authorized pavilion design will maintain an 18-foot-wide view corridor through the plaza to the shoreline during private events. Special Condition II-B-6 requires the installation of binoculars for public use, benches, flags, lighting, and cafe seating to furnish the pavilion, enhancing its utility to the public for daily use.

The Commission finds that the public access improvements sufficiently offset the potential for the pavilion to privatize the existing plaza and that these enhancements will improve overall the public's use and enjoyment of the existing plaza so that the net effect of the project, given the periodic unavailability of the plaza, will result in an overall enhancement of the public access. The Commission finds that the design of the proposed pavilion will be sufficiently congruous with and complements the existing development in the area and will enhance the public's use of the existing dedicated public access areas. The Commission also finds the proposed view corridor adequately preserves views of the Estuary and Alameda shoreline. The Commission also finds that the private use is incidental to the public access use, is in keeping with the character of the area and will not unduly obstruct public access to and enjoyment of the Bay. The Commission finds therefore, that the authorized pavilion construction and private use of the public access area will contribute to the public's use and enjoyment of a public access area which is currently underutilized. Finally, the Commission finds that the public access required in this amended permit will provide the maximum

feasible public access, consistent with the original Jack London Square project as modified through Amendment No. Eight to this permit.

Amendment No. Eight authorizes, on a temporary basis, tent-covered banquet use of the dedicated public access plaza until January 15, 1996. At the time that the Port first proposed the tent use to the staff in April of 1993, the staff had concerns that approving the tent use on a permanent basis would be inconsistent with the requirements of amended BCDC Permit No. 19-85 and with the Commission's Bay Plan policies on public access. Moreover, after viewing the plaza with the tent in it, the staff determined that the tent effectively blocked the existing view corridor from Water Street out to the estuary and the Alameda shoreline. However, the Commission finds that authorizing the temporary continuation of the temporary, periodic tent use will not unreasonably detract from the public's current, limited use and enjoyment of the area, because the tent use is only temporary in nature and under the existing conditions, the public's use of the area is limited.

D. **Water Quality.** Discharges from the proposed marina could adversely affect Bay water quality if not properly controlled. Special Condition II-C requires that the proposed marina be equipped with suitable facilities to be made available to the boating public for receiving and disposing sewage and other wastes. Special Condition II-B-4-1 requires the installation of restrooms for public use. These conditions assure that the project as authorized will not adversely affect the quality of Bay waters.

E. **Public Trust.** The project area was granted to the City of Oakland by the State to be used for public trust purposes. Therefore, the lands have to be administered in accordance with the trust grant. The tidal area within the Commission's jurisdiction will be used for a marina, a water-oriented use, or for improving shoreline appearance and public access. Therefore, the Commission finds that the proposed project is consistent with public trust needs.

F. **Environmental Review.** The permittee, the lead agency for the proposed project, prepared an Environmental Impact Report for Jack London Square--Phase I Development Plan. The final Environmental Impact Report was certified by the permittee on March 1, 1983, and a supplemental final Environmental Impact Report certified by the permittee on December 4, 1984. The Commission finds that, as conditioned herein, the proposed project will not have a significant adverse environmental impact on the Bay.

On March 8, 1991, the Port of Oakland Commission certified the "Addendum to the Supplemental Final Environmental Impact Report--Central Area Project--Jack London Square" which assesses the environmental impacts of the ferry terminal project authorized by Amendment No. Four to this permit. On April 21, 1993, the Port of Oakland determined that the project authorized in Amendment No. Seven to this permit was exempt from the requirement to prepare an environmental report on the project, citing Sections 15303 (e) and 15304 (e) of the California Environmental Quality Act (CEQA), Classes 3 and 4. On March 22, 1995, the Port of Oakland determined that the project authorized in Amendment No. Eight to this permit was exempt from the requirement to prepare an environmental report on the project, citing Sections 15303 (e) and 15304 (e) of the California Environmental Quality Act (CEQA), Classes 3 and 4.

G. **Conclusion.** For all of the above reasons, the benefits of the proposed project clearly exceed the detriment of the loss of water areas and the project will provide maximum feasible public access to the Bay and its shoreline. Therefore, the project is consistent with the San Francisco Bay Plan, the McAteer-Petris Act, the Commission's Regulations, and the coastal management program for San Francisco Bay.

#### IV. Standard Conditions

A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. Work must be performed in the precise manner and at the precise locations indicated in your application and amendment requests, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

D. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

~~E. The rights derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the application and amendment requests for this amended permit and the amended permit itself and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms of the amended permit.~~

E. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

F. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

G. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

H. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

I. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or its assignee if the amended permit has been assigned.

J. This amended permit shall not take effect unless the permittee executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit.

L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction up to the line of highest tidal action.

M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee or its assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

PERMIT NO. 19-85  
(Issued on March 13, 1986, As  
Amended Through September 14, 1995)  
AMENDMENT NO. EIGHT  
(Exclusive of Amendment Nos. One,  
Two, and Three)  
Port of Oakland  
Page 25

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and  
Development Commission on the date first above written.

WILL TRAVIS  
Executive Director  
San Francisco Bay Conservation and  
Development Commission

By: *Jeffrey S. Blanchfield*  
JEFFRY S. BLANCHFIELD  
Chief Planner

Enc.  
JSB/JL/tr

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board,  
Attn.: Certification Section  
Environmental Protection Agency, Attn.: Clyde Morris, W-7-2

\* \* \* \* \*

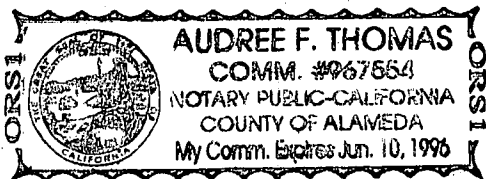
Receipt acknowledged, contents understood and agreed to:

Executed at *Oakland, Ca*

*[Signature]*  
Applicant

On *September 26, 1995* By:

*Audree F. Thomas*  
*Notary Public*  
Title



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

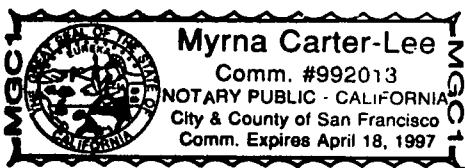
State of CALIFORNIA

County of SAN FRANCISCO

On September 14, 1995, before me, MYRNA CARTER-LEE, NOTARY PUBLIC,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JEFFRY S. BLANCHFIELD,  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ ~~proved to me on the basis of satisfactory evidence~~  
to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~  
subscribed to the within instrument and ac-  
knowledged to me that he/~~she/they~~ executed  
the same in his/~~her/their~~ authorized  
capacity~~(ies)~~, and that by his/~~her/their~~  
signature~~(s)~~ on the instrument the person~~(s)~~,  
or the entity upon behalf of which the  
person~~(s)~~ acted, executed the instrument.



WITNESS my hand and official seal.

*Myrna Carter-Lee*  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER  
ACTING EXECUTIVE DIRECTOR  
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

BCDC PERMIT NO. 19-85 (Amt. 8)  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

9/14/95

\_\_\_\_\_  
DATE OF DOCUMENT

### SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)  
SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION

NO OTHER SIGNER

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

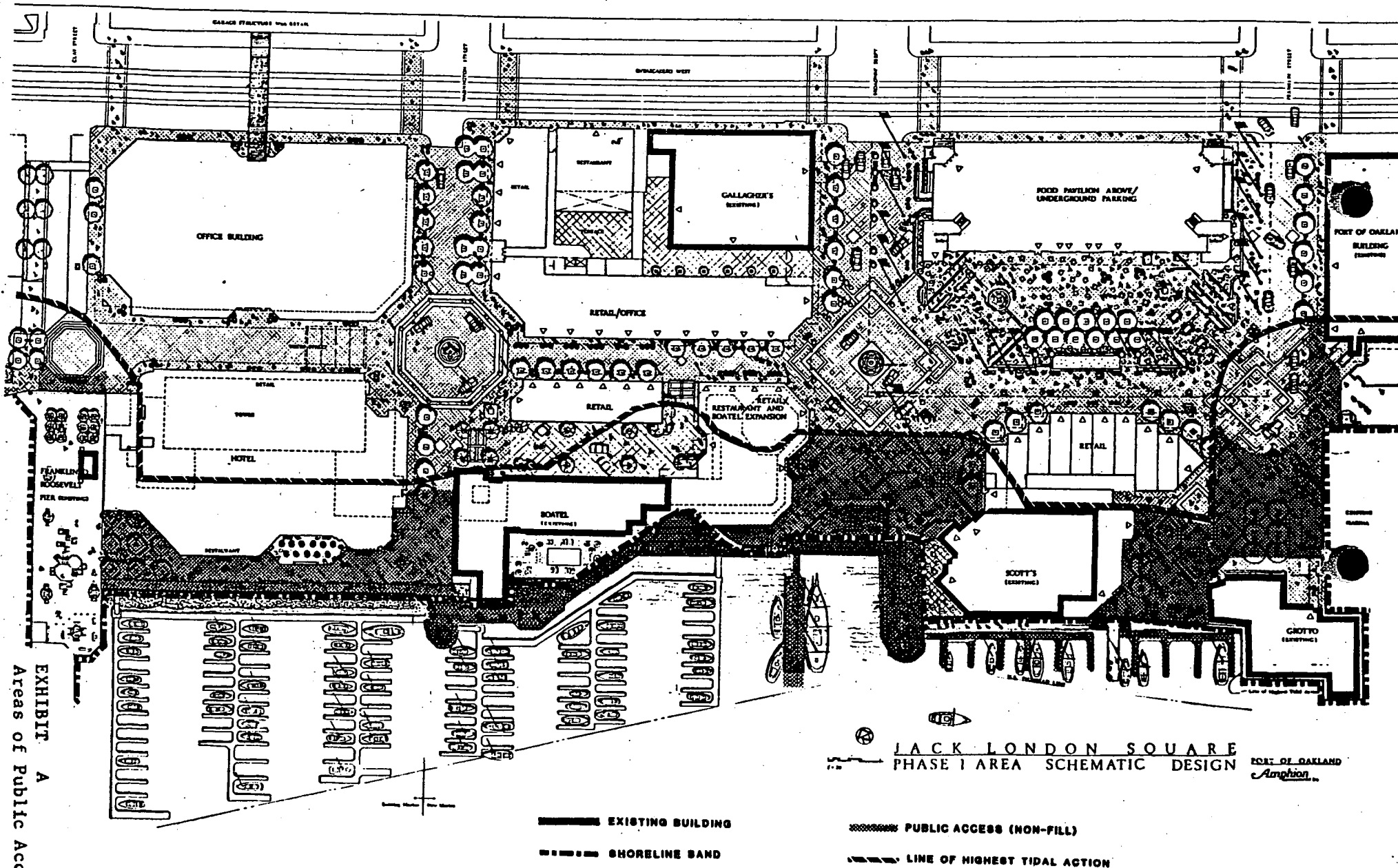


EXHIBIT A  
Areas of Public Access

JACK LONDON SQUARE  
 PHASE I AREA SCHEMATIC DESIGN  
 PORT OF OAKLAND  
 Amphion

## PROPOSED DEVELOPMENT

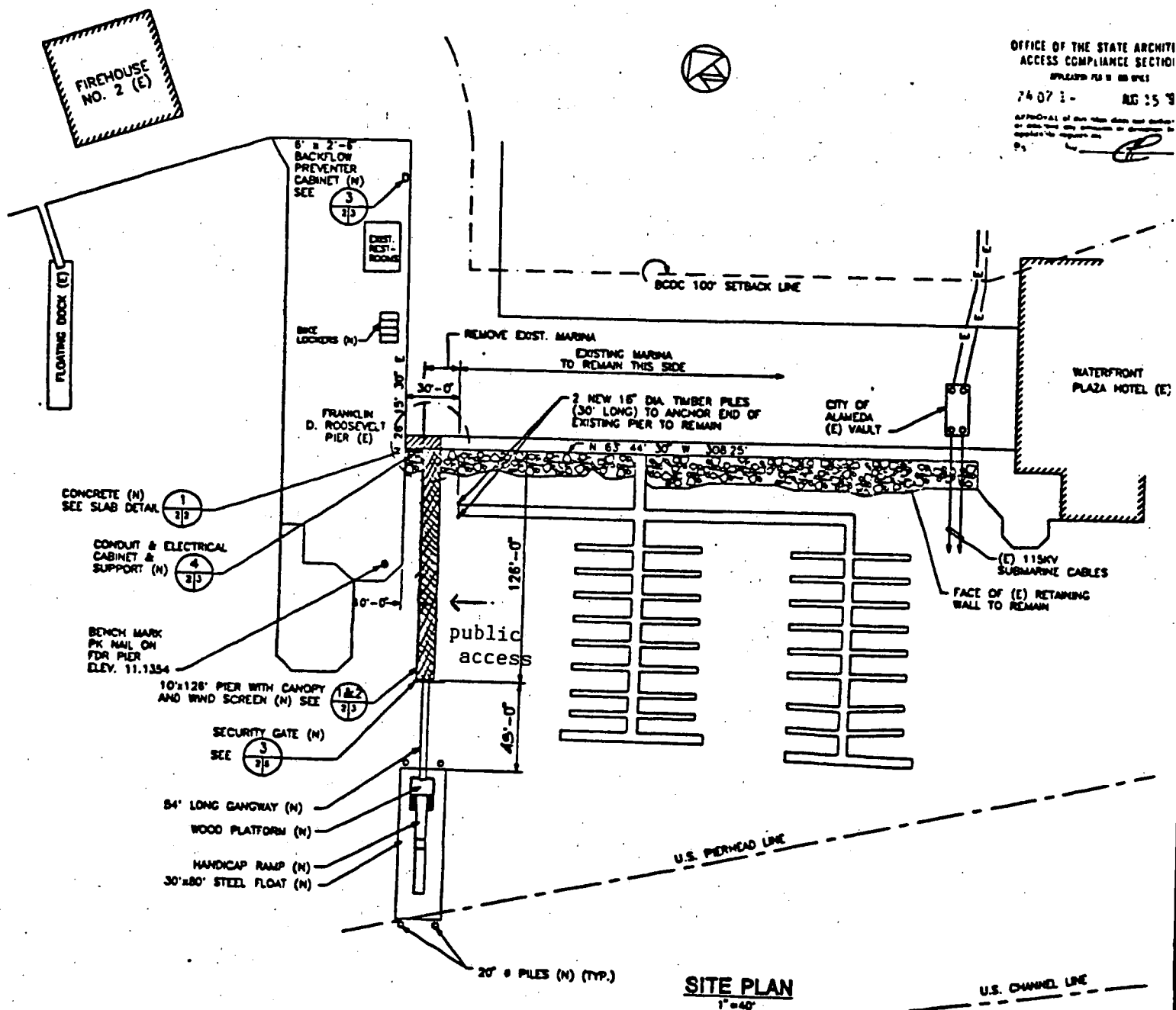
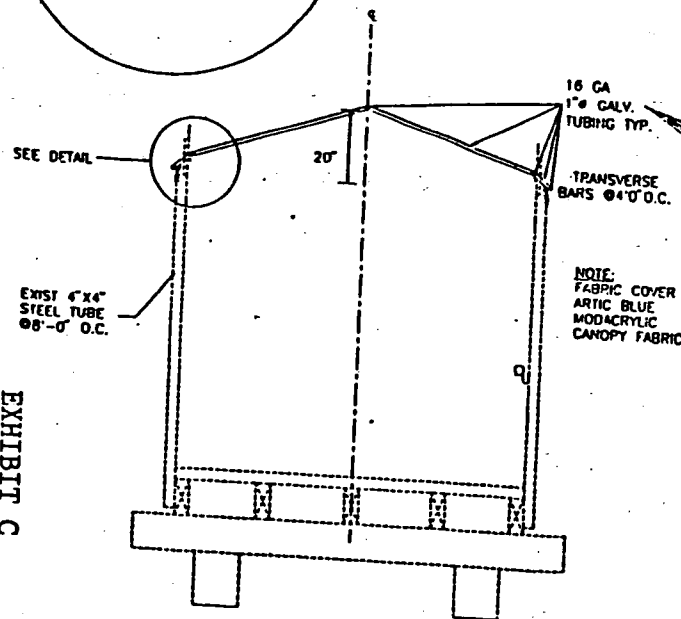
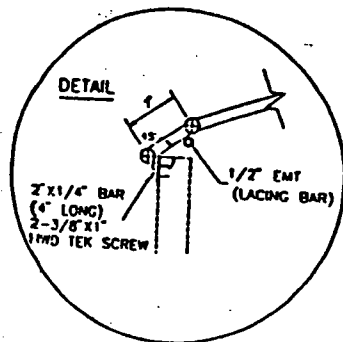
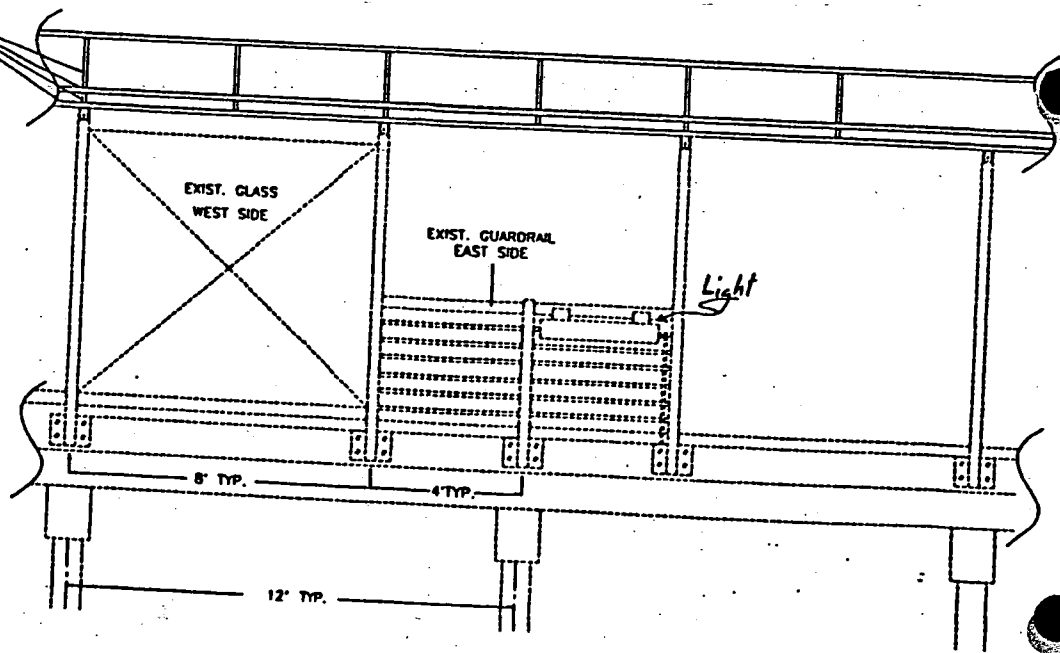


Exhibit B  
Ferry dock Public Access



**SECTION**  
N.T.S.



**ELEVATION**  
N.T.S.

**EXHIBIT C**  
**FERRY DOCK CANOPY**

<b>REVISIONS</b> DATE BY FIELD NUMBER		<b>APPROVALS</b> PROJECT ENGINEER PROJECT MANAGER PROJECT IN CHARGE		<b>PORT OF OAKLAND</b> 530 WATER STREET OAKLAND, CALIFORNIA		<b>CHIEF ENGINEER</b> APPROVED DATE		<b>JACK LONDON SQUARE FERRY</b> CANOPY-ELEVATION & SECTION DATE 11-11-82 DRAWN BY CHECKED BY DATE 11-11-82	
--	--	--	--	--	--	---	--	---	--

92217755

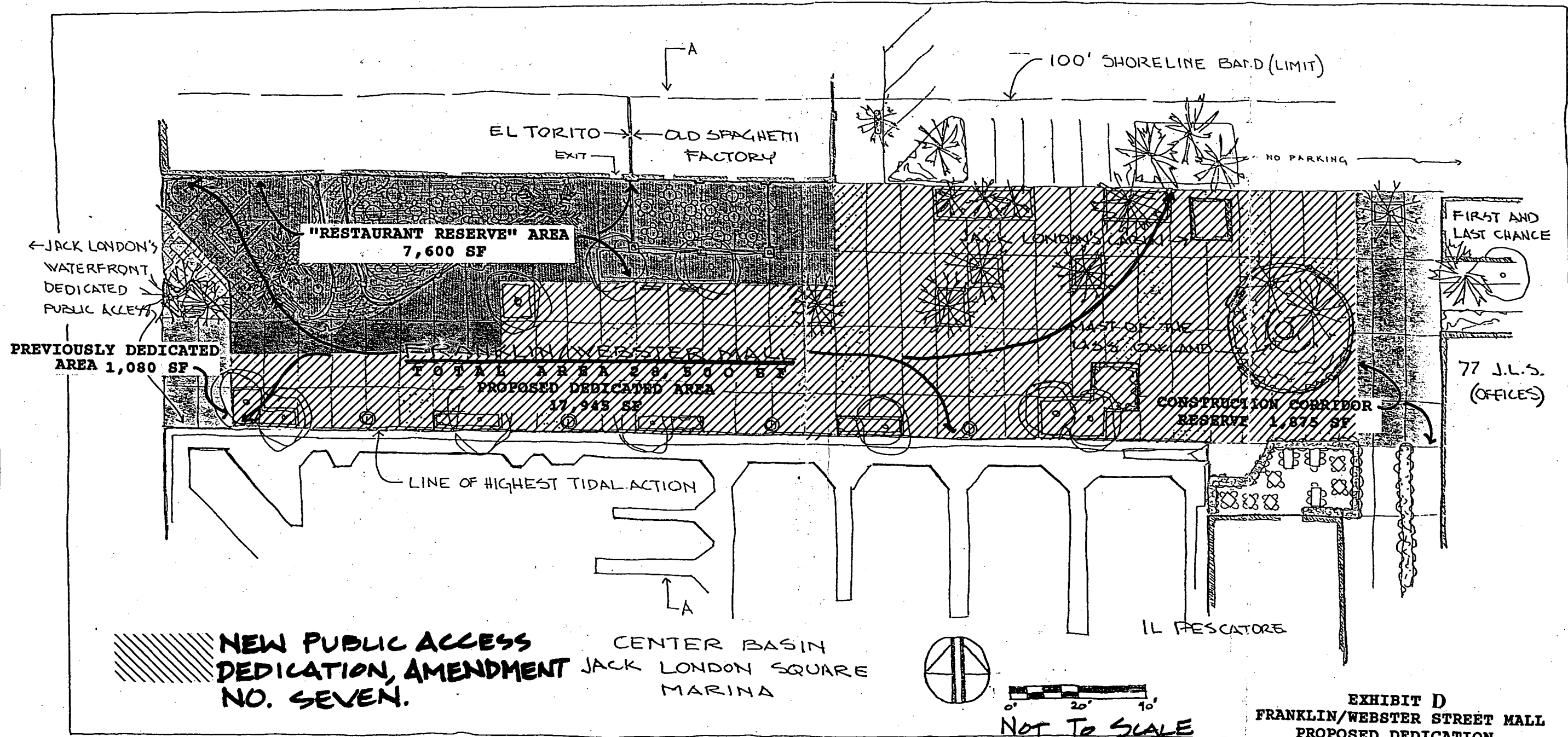


EXHIBIT D  
FRANKLIN/WEBSTER STREET MALL  
PROPOSED DEDICATION  
SHEET 2 of 2 Rev. 8/93

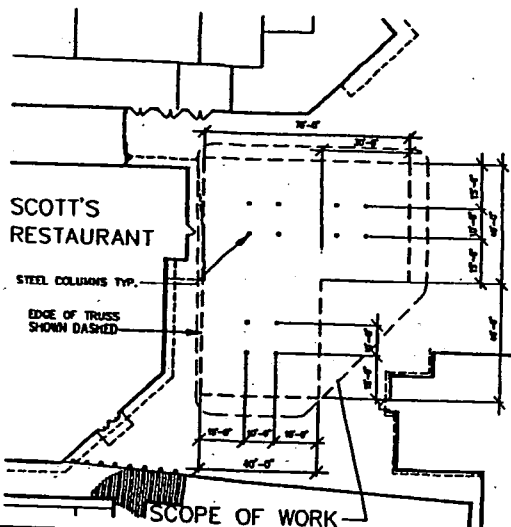
# **GUIDELINES FOR PRIVATE USE OF PUBLIC PAVILION**

Permit No. 19-85--Exhibit E

	Public Use of the Pavilion	Private Use of the Pavilion	Percentage of Private Use of Pavilion during high use periods (weekend days/nights)
Percentage of use per year.	80%	20%	
Number of days available per year for use of the public pavilion.	292	73	
No. of weekend days/nights* to be made available for use of the Pavilion on average per month from May through October	6	3	33%
Minimum no. of weekend days/nights for Public Use in any month	3		
No. weekend days/nights* to be made available for use of the Pavilion on average per month from November through April	5	4	40%

\*weekend nights = Friday and Saturday; weekend days = Saturday and Sunday

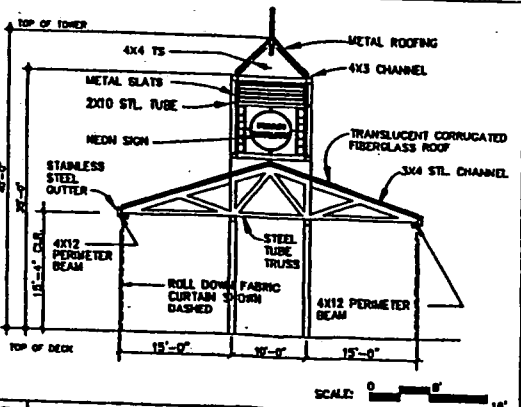
1. Scott's will submit a quarterly calendar of proposed private events for Port approval. The events calendar will include a time estimate of each individual event, including set-up and take-down times consistent with each event.
2. The Port will transmit a copy of the approved quarterly events calendar to BCDC staff for its information.
3. The Port will closely monitor the use of the pavilion for private events to ensure compliance with the 20-percent maximum private use limit.
4. The Port will not approve more than two consecutive private events at any time.
5. Scott's will coordinate with the Port's Marketing Director to eliminate conflicts between private events and any public events.
6. Scott's will not lower the fabric curtains prior to one (1) hour before a private event and will retract the curtains within one (1) hour after a private event.
7. Scott's will be responsible for the repair and maintenance of the pavilion structure, the outdoor tables and chairs and the binoculars.
8. Scott's will be responsible for the daily clean-up of the area beneath the pavilion structure.
9. The Port, Scott's and BCDC staff will review these guidelines within six (6) months of the first private event to determine if additional guidelines are necessary.



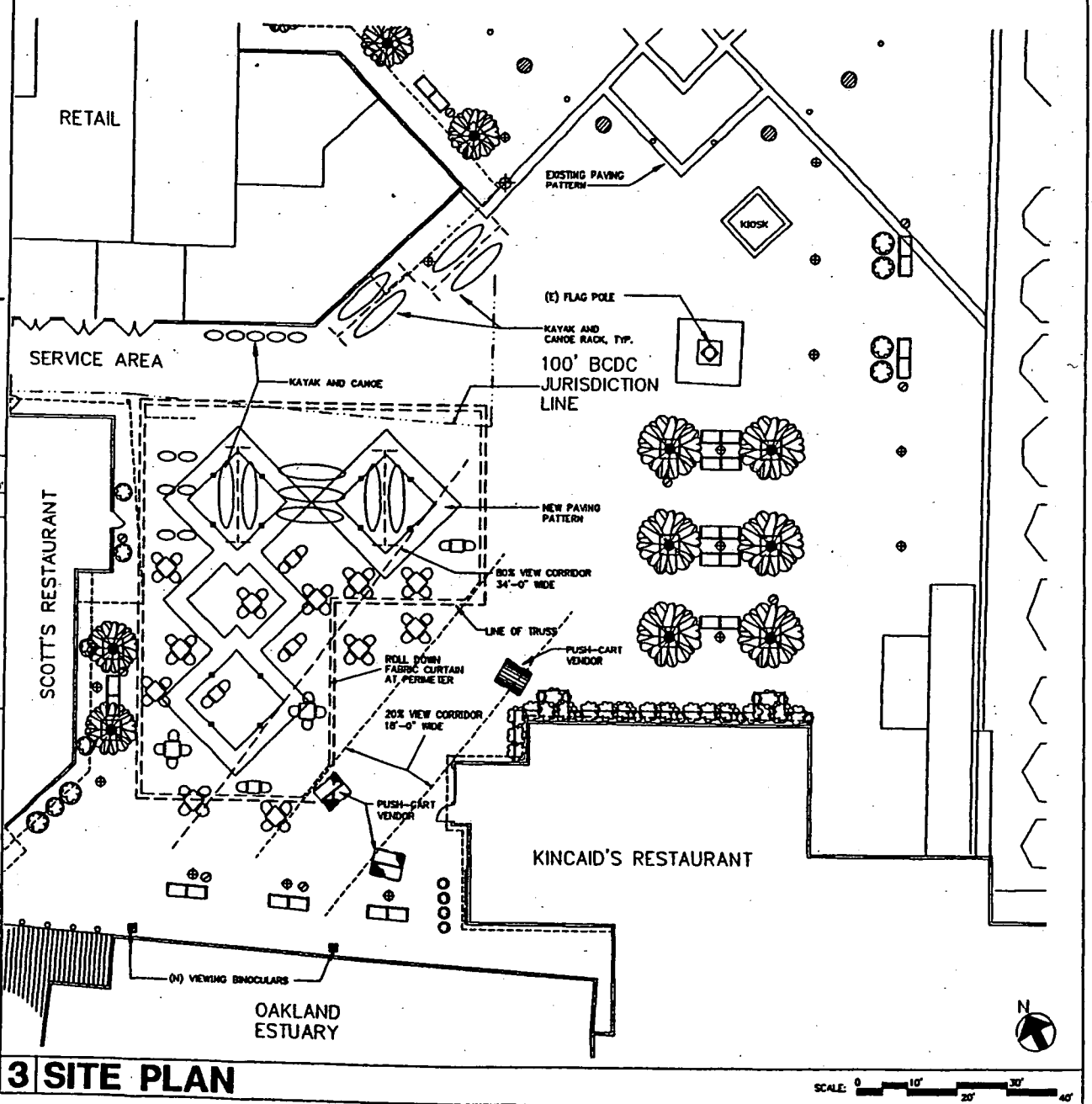
# 1 PAVILION PLAN

SCALE: 0 20' 40'

- LEGEND**
- TRASH CAN
  - ◆ LIGHT POLE
  - FIXED BOLLARD
  - MOVABLE BOLLARD
  - ◇ FLAG POLE
  - (RL) RELOCATED
  - (N) NEW
  - (E) BENCH
  - PLANTER
  - ⊗ TABLE & CHAIRS
  - (N) VIEWING BINOCULAR
  - ▷ (N) LIGHT FIXTURE
  - (E) EXISTING



# 2 TOWER SECTION



# 3 SITE PLAN



ARCHITECTURE & PLANNING  
440 W. 14th Avenue  
San Francisco, CA  
415.397.3313  
FAX 415.397.3319

PUBLIC PAVILION

87 BROADWAY  
OAKLAND, CALIFORNIA

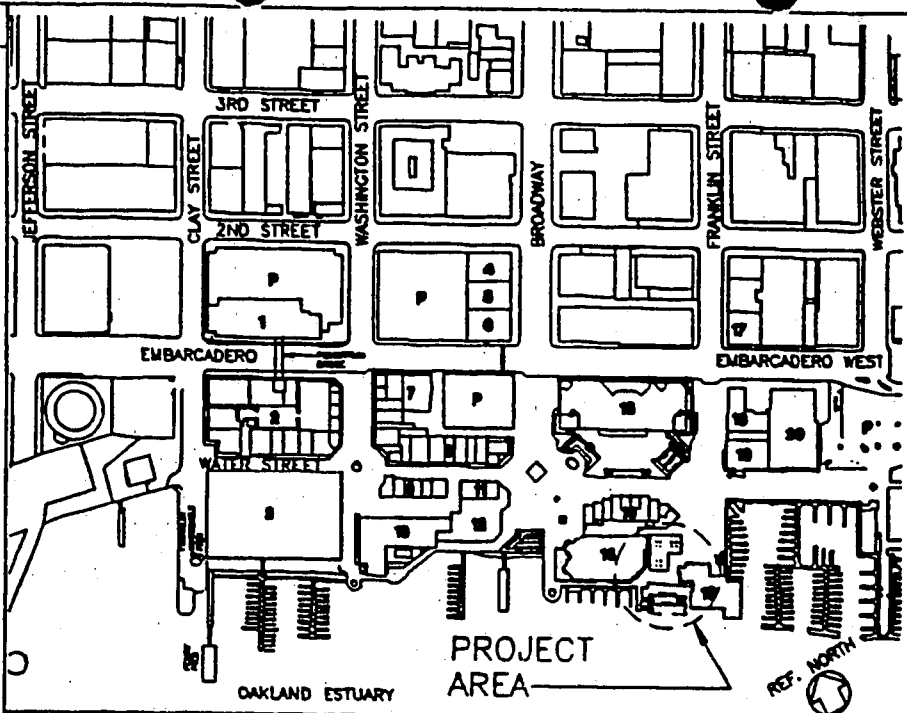
No.	Revision	By
1	BCDC COMMENTS	SK
2	7/2/95	SK

Job No. 9427D  
Date 7/2/95  
Checked by SK  
Sheet Title

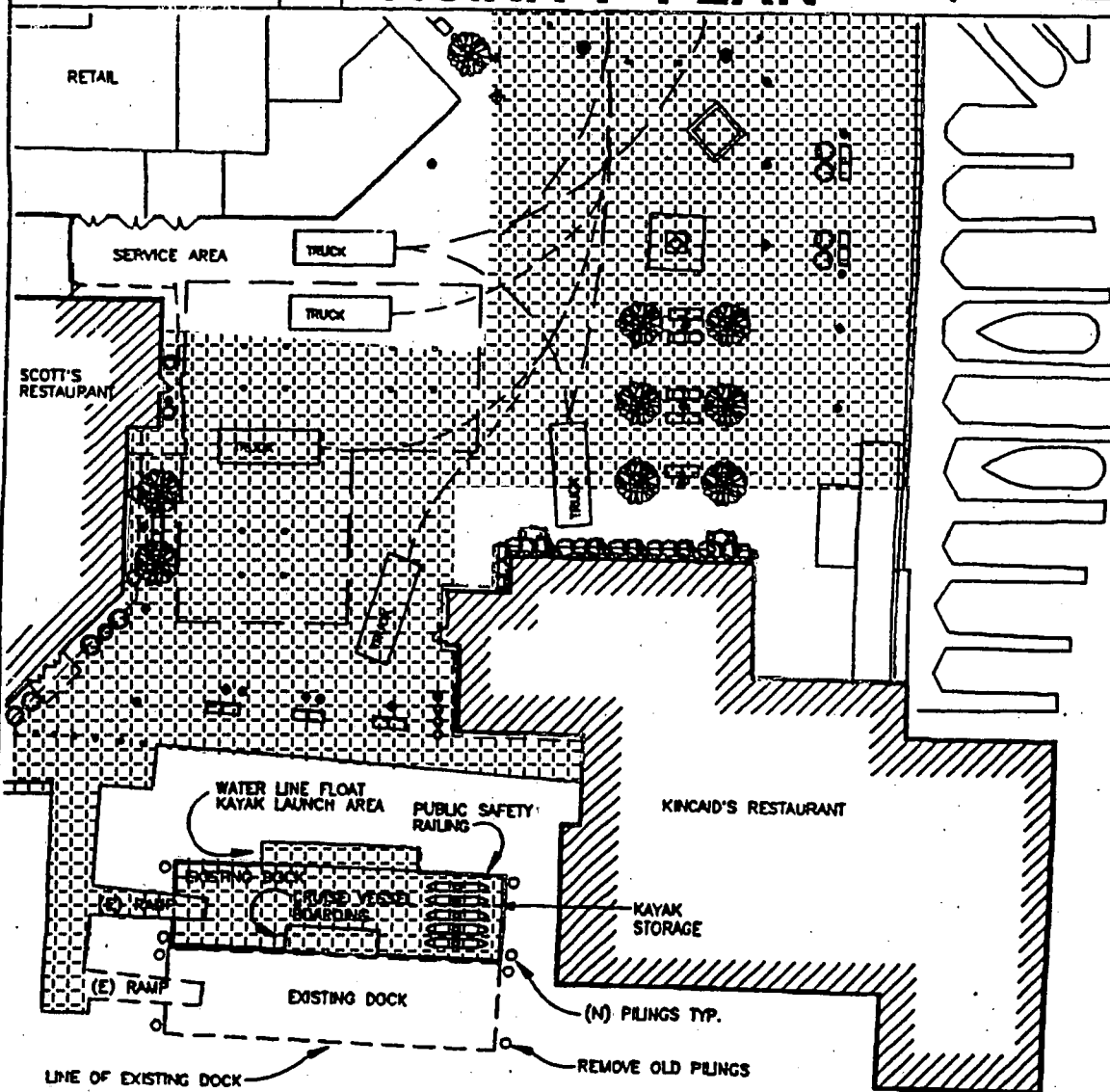
SITE PLAN  
TOWER SECTION &  
DIMENSION PLAN


EXHIBIT F

- 1 RETAIL
- 2 PORT OF OAKLAND
- 3 THE MEADOW
- 4 CHERIE'S RESTAURANT
- 5 OFFICES
- 6 OVERLAND HOUSE GRILL
- 7 MAC'S
- 8 WATER ST. TWO
- 9 WATER ST. THREE
- 10 WATERFRONT PLAZA HOTEL
- 11 HOTEL RETAIL
- 12 JACK'S RESTAURANT
- 13 THE PAVILION
- 14 BARNES & NOBLE
- 15 WATER ST. ONE
- 16 SCOTT'S RESTAURANT
- 17 KINCAID'S RESTAURANT
- 18 KDIA RADIO
- 19 PIER ONE IMPORT
- 20 EL TORITO RESTAURANT
- 21 OLD SPAGHETTI FACTORY
- 22 PARKING



SCALE:  200' 400'

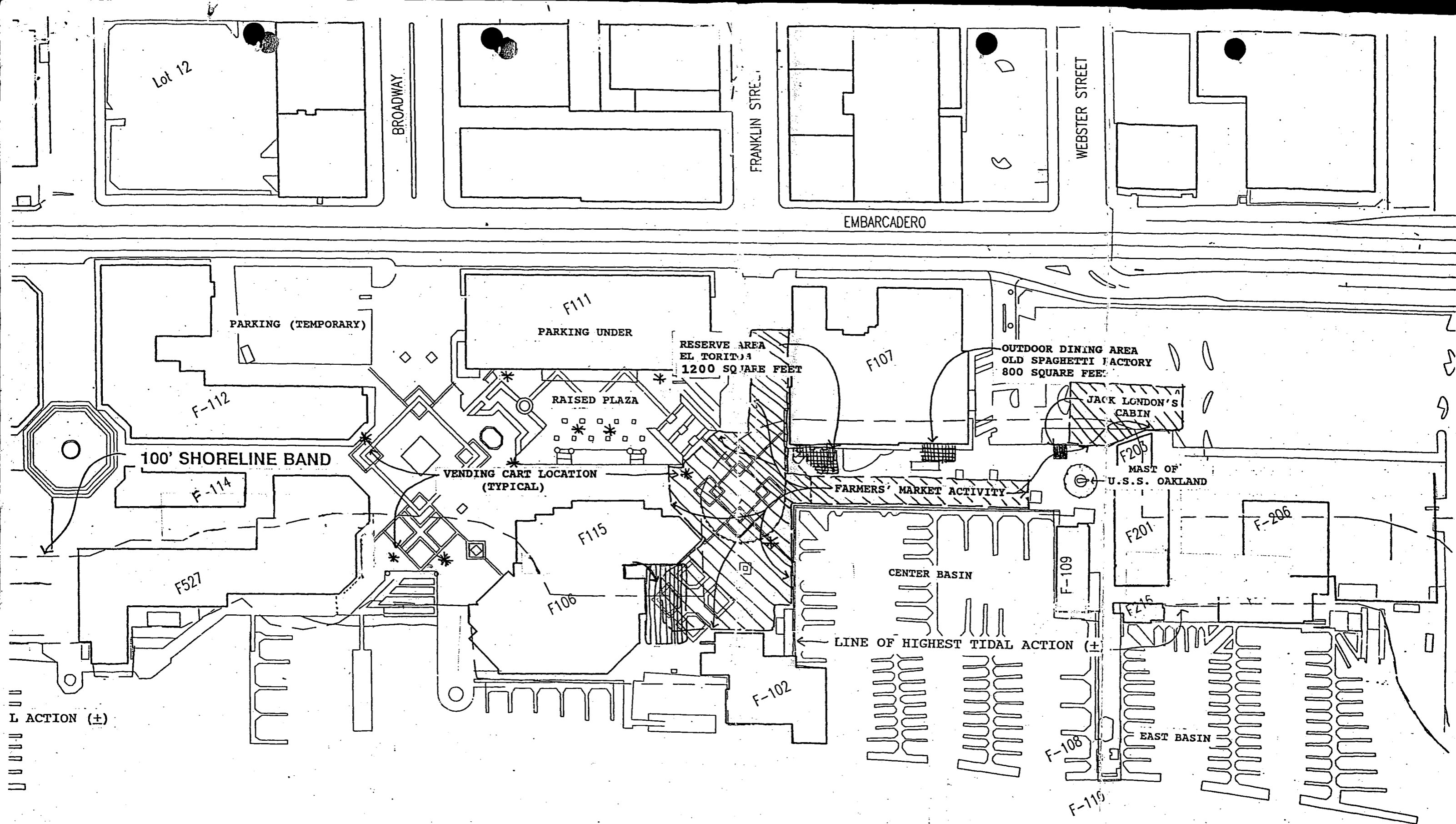


 DEDICATED  
PUBLIC ACCESS

**EXHIBIT G**

## 2 | DETAIL - TRUCK TURNAROUND

SCALE: 0 20' 40'



**EXHIBIT BB**  
**PROJECT SITE PLAN**  
**PROPOSED AREA UTILIZATIONS**